TITLE 20
TELECOMMUNICATIONS AND OTHER COMMERCIAL UTILITIES

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20.02.010 Purpose.

The purpose and intent of this title is to:

A. Establish a local policy concerning regulation of telecommunications carriers, operators, providers, and

other commercial utilities in public ways and on city and/or public property;

B. Establish, consistent with federal and state law, clear local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of activities of telecommunications carriers, operators, providers, and other commercial utilities in public ways and on city and/or public property;

C. Promote competition in telecommunications;

D. Minimize unnecessary local regulation of telecommunications carriers, operators, providers, and other commercial utilities;

E. Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions and residents of the city;

F. Permit and manage reasonable access to the public ways of the city for telecommunications purposes on a competitively neutral basis;

G. Conserve the limited physical capacity of the public ways held in public trust by the city;

H. Assure that the city's current and ongoing costs of granting and regulating private access to and use of the public ways are fully paid by the persons seeking or using such access and causing such costs;

I. To the extent permitted by federal and state law, secure fair and reasonable compensation to the city and the residents of the city for permitting private use of the public ways;

J. Assure that all telecommunications carriers, operators, providers, and other commercial utilities utilizing public ways or city or public property within the city comply with the ordinances, rules and regulations of the city;

K. Assure that the city can continue to fairly and responsibly protect the public health, safety and welfare; and

L. Enable the city to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.02.020 Definitions.

For the purpose of this title, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

"The Act" means the Federal Telecommunications Act, January 31, 1996.

"Addressability" means the ability of a telecommunications system to allow telecommunications carriers, operators, or providers to authorize by remote control customer terminals to receive, change, or to cancel any or all specified programming.

"Affiliate" means an entity which (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership with franchisee. For purposes of this definition, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent.

"Applicant" means any person or entity that applies for any public way agreement, franchise, lease, or permit pursuant to this title.

"Cable facilities" means equipment and wiring used to transmit audio and video signals to subscribers.

"Cable operator" means a telecommunications carrier providing or offering to provide "cable service" within the city as that term is defined in the Cable Act and Chapter 13.36 ACC.

"Cable service" for the purpose of this title shall have the same meaning provided by the Cable Act and Chapter 13.36 ACC.

"Cable system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service and other service to subscribers.

"Carrier" means any provider of telecommunications services, except that this term does not include aggregators of telecommunications services as defined in Section 225 of the Act. (See also "Telecommunications carrier".)

"City" means the city of Auburn, Washington as defined in ACC 1.04.010 to include all future areas annexed into the city.

"City property" means and includes all real property owned by the city, other than public ways and utility easements as those terms are defined herein, and all property held in a proprietary capacity by the city, which are not subject to public way agreements and franchising as provided in this title.

"Commercial utility provider" means any natural gas, electric power, pipeline, or other company desiring to utilize city public ways for transporting, purveying, or delivering bulk products, or providing commercial power or gas services within the city, or needing to transport bulk product or services through the city to other destinations for commercial purposes.

"Council" means the city council of the city of Auburn, Washington acting in its official capacity constituting the legislative body of the city.

"Data communication" means (1) the transmission of encoded information or (2) the transmission of data from one point to another.

"Dwelling units" means residential living facilities as distinguished from temporary lodging facilities such as hospitals, hotel and motel rooms and dormitories, and includes single-family residential units and individual apartments, condominium units, mobile homes, extended care facilities and other multiple-family residential units.

"Emergency" means a condition of imminent danger to the health, safety, and welfare of property or persons located within the city including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots or wars.

"Excess capacity" means the volume or capacity in any existing or future duct, conduit, manhole, handhole or other utility facility within the public way that is or will be available for use for additional telecommunications facilities.

"FCC" or "Federal Communications Commission" means the federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

"Fiber optics" means the technology of guiding and projecting light for use as a communications medium.

"Franchise" shall mean the initial authorization, or renewal thereof, approved by an ordinance of the city, which authorizes the franchisee to construct, install, operate, or maintain telecommunications or other commercial utility facilities in, under, over, or across public ways of the city and to also provide service to persons or areas in the city.

"Franchise area" means all areas within the current city limits and within any future adjusted boundaries of the city limits. The effective date of any such changes in the city limits will be the effective date(s) of any future annexations.

"Franchisee" means a person, as defined herein, firm or corporation to whom or which a franchise, as defined in this section, is granted by the council under this title and the lawful successor, transferee or assignee of said person, firm or corporation subject to such conditions as may be defined in the franchise and in this title.

"Grantee" means a holder of a public way agreement, franchise, or lease approved by the city council of the city of Auburn.

"Gross revenue" shall mean all receipts accrued in a franchisee's books for all commercial utility, communications and communications-related operations and services from subscribers, who have a service address within the corporate limits of the city of Auburn, to

franchisee's business as well as any other revenue arising from operation or possession of a franchise agreement with the city of Auburn, less the application and administrative fees mandated in the franchise agreement and the franchise fee intended for compensation for use of "public ways". By way of example, but without limitation, "gross revenue" includes all revenues from the sale or lease of equipment, installation charges to subscribers who have service addresses within the corporate limits of the city, charges to customers, subscribers and other users of the telecommunications system who have service addresses within the corporate limits of the city. "Gross revenues" does not include: (a) taxes, fees, or assessments of any kind or description imposed on or levied against franchisee which are not applicable to all other persons or entities doing business within the city, (b) revenues noncollectible from customers (bad debts) which have been written off through generally accepted accounting practices, (c) discounts, and (d) any applicable exclusions under the law.

"Lessee" means the holder of a lease for use of city or public property which has been approved by the city council of the city of Auburn.

"Other ways" means the highways, streets, alleys, utility easements or other rights-of-way within the city, but under the jurisdiction and control of a governmental entity other than the city.

"Overhead facilities" means utility poles, utility facilities and telecommunications or other commercial utility facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

"OVS" means open video system which is a telecommunications system having two-thirds of its capacity set aside for use by other providers, programmers, or competitive business on a subleasing basis. Because of its self-competitive nature, an OVS is subject to regulatory restrictions.

"Person" means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals and includes their lessors, trustees and receivers.

"Property of franchisee" means all plant, or facilities owned, installed or used by a franchisee in the conduct of its business in the city under the authority of a franchise granted pursuant to this title.

"Proposal" means an application by any person or entity that applies for any public way agreement, franchise, lease, or permit pursuant to this title.

"Public place" means an area generally open to public access including all public ways, parks, plazas, publicly owned buildings, theaters, and entrances or doorways to places of business that front on a public way.

"Public street" means any highway, street, alley or other public right-of-way for motor vehicle travel under the jurisdiction and control of the city which has been acquired, established, dedicated or devoted to highway purposes.

"Public way(s)" shall mean the surface, the air space above the surface, and the space below the surface of any public street, including, but not limited to, any public alley, bridge, land path, trail, court, circle, roundabout, boulevard, drive, tracts, right-of-way or sidewalk under the

jurisdiction of the city as is now, or in the future, laid out, improved or unimproved within the limits of the city presently and as such limits may be hereafter extended.

"State" means the state of Washington.

"Subscriber" or "customer" means a person or user of the commercial utility or telecommunications system who lawfully receives commercial utility or communications services or other service therefrom with franchisee's express permission.

"Surplus space" means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by federal or state law, orders, and regulations, to allow its use by a telecommunications carrier for a pole attachment.

"Telecommunications carrier" means and includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or facilities within the city's public ways, for the purpose of offering telecommunications services within the city. (See also "Carrier".)

"Telecommunications facilities" means the plant, equipment and facilities, including but not limited to, cables, wires, conduits, ducts, pedestals, antennae, electronics and other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunications services.

"Telecommunications operator" means and includes every person who provides telecommunications services within the city over telecommunications facilities located within

the city's public ways, without any ownership, management or control of the facilities.

"Telecommunications provider" means and includes every person who utilizes facilities within the city's public ways to provide services outside the city only.

"Telecommunications service" means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

"Telecommunications system," see "Telecommunications facilities."

"Underground facilities" means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.

"Usable space" means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in any federal or state orders and regulations.

"Utility easement" means any easement in which the city holds an interest in or an interest has been acquired, established, dedicated or devoted for city utility purposes.

"Utility facilities" means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within

the public ways of the city and used or to be used for the purpose of providing utility or telecommunications services.

"WUTC" means the Washington State Utility and Transportation Commission. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.02.030 Business registration required.
Except as otherwise provided herein, all commercial utilities, cable operators, telecommunications carriers, operators and providers engaged in the business of transmitting, supplying or furnishing of commercial utility or telecommunications service of any kind originating or terminating in the city, or utilizing facilities within the city's public ways to provide services exclusively outside of the city only, shall apply for and obtain a business registration from the city pursuant to Chapter 5.84 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.02.040 Public way agreement required.
Except as otherwise provided herein, any commercial utility or telecommunications provider who desires to construct, install, operate, maintain, or otherwise locate facilities in, under, over or across any public way of the city for the sole purpose of providing service to persons and areas outside the city shall first obtain a public way agreement granting the use of such public ways from the city pursuant to Chapter 20.04 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.02.050 Franchise required.
Except as otherwise provided herein, any commercial utility, telecommunications carrier or operator who desires to construct, install, operate, maintain or otherwise locate facilities in, under, over or across any public way of the

city, and to also provide service to persons or areas in the city, shall first obtain a franchise granting the use of such public ways from the city pursuant to Chapter 20.06 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.02.060 Cable television franchise required.
Except as otherwise provided herein, any telecommunications carrier or other person who desires to construct, install, operate, maintain or locate cable or telecommunications facilities in any public way in the city for the purpose of providing cable service to persons in the city shall first obtain a cable franchise from the city pursuant to Chapter 13.36 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.02.070 Facilities lease required.
No commercial utility, telecommunications carrier or other entity who desires to locate facilities or other equipment on city property shall locate such facilities or equipment on city property unless granted a facilities lease from the city pursuant to Chapter 20.08 ACC. The city council reserves unto itself the sole discretion to lease city property for telecommunications and other facilities, and no vested or other right shall be created by this section or any provision of this title applicable to such facilities leases. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.02.080 Construction permit required.
Except as otherwise provided herein, the holder of a public way agreement, franchise, or lease granted pursuant to this title, and the holders of cable franchises granted pursuant to Chapter 13.36 ACC, shall, in addition to said public way agreement, franchise, or lease, be required to obtain a construction permit from the city pursuant to Chapter 12.24 ACC. No work, construction, development, excavation, or installation of any equipment or facilities shall take place

within the public ways or upon city property until such time as the construction permit is issued. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.02.090 Application to existing franchise ordinances, agreements, leases, and permits and effect of other laws.

All grantees, franchisees, and lessees subject to this title are at all times subject to and must comply with all applicable existing and future federal, state and local laws, ordinances, codes, rules, regulations and orders.

A. This title shall have no effect on agreements in effect prior to adoption, unless otherwise provided, in any existing franchise ordinance, franchise agreement, lease, permit, agreement or other authorization to use or occupy a public way in the city until:

1. The expiration of said franchise ordinance, agreement, lease, permit, or authorization; or

2. The amendment to an unexpired franchise ordinance, franchise agreement, lease, permit, authorization, or agreement unless both parties agree to defer full compliance to a specific date not later than the expiration date provided therein.

B. Nothing in this title shall be deemed to create an obligation upon any person for which the city is forbidden to require pursuant to federal, state, or other law.

C. Upon expiration of the electrical and natural gas franchises in effect at time of adoption of this title, granted by Chapter 13.44 ACC, the franchise shall be renegotiated under the terms of this title. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.02.100 Reserved.
(Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.02.110 Fees and compensation not a tax.
The fees, charges and fines provided for in this title and any compensation charged and paid as provided herein, whether fiduciary or in-kind, are separate from, and additional to, any and all federal, state, local, and city taxes as may be levied, imposed or due from a commercial utility, telecommunications carrier, operator, or provider, its customers or subscribers or on account of the lease, sale, delivery or transmission of telecommunications services. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.02.120 Taxes are not to be a credit.
Any compensation paid as provided for in public way agreements, franchises, and/or facility leases shall be exclusive of and in addition to all special assessments and taxes of whatever nature which are applicable to all other persons or entities doing business within the city, including, but not limited to, ad valorem taxes, sales taxes, corporate or business occupation taxes or other taxes or fees imposed or levied by any governmental entity. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

CHAPTER 20.04
PUBLIC WAY AGREEMENTS

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20.04.010 Public way agreements.

A public way agreement shall be required of any commercial utility or telecommunications provider who desires to occupy specific public ways of the city for the sole purpose of providing commercial utility or telecommunications services to persons or areas outside the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.020 Public way agreement applications.

Any person that desires a public way agreement pursuant to this title shall file an application with the city which shall include the following information:

A. The identity of the applicant, including all affiliates of the applicant;

B. A description of the commercial utility or telecommunications services that are or will be offered or provided by the applicant using its facilities;

C. A description of the transmission medium or transporting means that will be used by the applicant to offer or provide such telecommunications or utility services;

D. Preliminary engineering plans, specifications and a network map of the facilities to be located within the city, all in sufficient detail to identify:

1. The location and route requested for applicant's proposed facilities;

2. The location of all overhead and underground public utility, telecommunication, cable, water, sewer drainage and other facilities in the public way along the proposed route;

3. The location(s), if any, for interconnection with the utility or telecommunications facilities of other utility or telecommunications carriers, operators, and providers; and

4. The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate;

E. If applicant is proposing to install aboveground and/or overhead facilities:

1. Evidence that surplus space is available for locating its utility or telecommunications facilities on existing utility poles along the proposed route;

2. Proof of compliance with city's zoning code; and

3. Demonstrate compatibility with existing and future street illumination systems;

F. If applicant is proposing an underground installation in existing ducts or conduits within the public ways, information in sufficient detail to identify:

1. The excess capacity currently available in such ducts or conduits before installation of applicant's utility or telecommunications facilities;

2. The excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's utility or telecommunications facilities;

3. Evidence of ownership or a right to use such ducts or conduits;

G. If applicant is proposing an underground installation within new ducts or conduits to be constructed within the public ways:

1. The location proposed for the new ducts or conduits; and

2. The excess capacity that will exist in such ducts or conduits after installation of applicant's utility or telecommunications facilities;

H. A preliminary construction schedule and completion date;

I. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities, and to offer or provide the utility or telecommunications services, including, but not limited to, evidence that the applicant has registered with the Washington Utilities and Transportation Commission;

J. All deposits or charges required pursuant to this title;

K. Proof of ability to meet city's bonding requirements in ACC 12.24.050 when the applicant does not have an existing standing bond on file with the city sufficient to cover the scope of work proposed and proof of ability to meet security requirements in ACC 20.10.240 through 20.10.260;

L. A copy of an Auburn business registration stamped and signed by the city clerk; and

M. A nonrefundable application fee in the amount of $500.00. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.030 Notice of complete application and scheduling of public hearing.

A. Within 30 calendar days after receipt of the public way agreement application, the city will complete review of the application to determine whether the application contains sufficient information as outlined in ACC 20.04.020 to proceed with processing. If during the 30-calendar-day review period, the city engineer determines that the application is incomplete, the city engineer will issue a letter to the applicant specifying the additional information necessary to complete the application. The applicant will be

given 30 calendar days to respond to the request for additional information. Once the additional information is received by the city, an additional 14 calendar days will be allowed to determine whether the application is complete. Once the application is determined complete, written notice will be provided following the procedure outlined in this subsection. If the applicant needs additional time to respond, the applicant may request up to an additional 30 calendar days. If a response is not timely received, the application will be returned to the applicant with a notice that the application is rejected due to failure to provide the required information. Any new applications will require a new application fee.

B. When satisfied that the application is complete, the city engineer will notify the applicant in writing that the application is complete and inform the applicant of the schedule for consideration by the public works committee. If the public works committee determines that the application merits a separate public hearing, it shall recommend to the city council that it schedule a public hearing. The city clerk will notify the applicant in writing of the scheduled hearing. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.040 Determination by the city.

Within 180 calendar days from the time of notification that the application is complete, under ACC 20.04.030(A), the city council shall reach a decision. The city council's decision to grant or deny, in whole or in part, an application for a public way agreement shall be based upon the following:

A. Whether the applicant has received all requisite licenses, certificates, and authorizations from the Federal Communications Commission, the Washington Utilities

and Transportation Commission, and any other federal or state agency with jurisdiction over the activities proposed by the applicant;

B. The capacity of the public ways to accommodate the applicant's proposed facilities;

C. The capacity of the public ways to accommodate additional utility, cable, and telecommunications facilities if the public way agreement is granted;

D. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the public way agreement is granted;

E. The public interest in minimizing the cost and disruption of construction within the public ways;

F. The service that applicant will provide to the community and/or the region;

G. The effect, if any, on public health, safety and welfare if the public way agreement is granted;

H. The availability of alternate routes and/or locations for the proposed facilities;

I. Applicable federal and state utility and telecommunications laws, regulations and policies;

J. The ability to avoid or mitigate, to the city's satisfaction, future conflicts with the operation, repair, replacement, and maintenance of city-owned and other public/private utilities;

K. The ability of the applicant to stabilize existing pavement structures prior to disturbance in a manner sufficient to ensure future deterioration is not accelerated by virtue of the installed facilities, and/or the ability and willingness of the applicant to fully mitigate such damages to the extent that they may prove unavoidable to the satisfaction of the city. Such security for the pavement's integrity may include additional periods of warranty bonding for up to five years from the date of completion of work as determined by the city engineer;

L. Demonstrated ability and commitment to meet city bonding and security requirements established in ACC 20.10.240 through 20.10.260 and Chapter 12.24 ACC; and

M. Such other factors as may demonstrate that the public way agreement to use the public ways will serve the community interest. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.050 Notification of council action and execution of agreement.

Upon the city council's decision, the public works director shall notify the applicant of the decision including reason(s) for denial and instruct the applicant of the procedure to follow to complete execution of the agreement if approved by the city council. No public way agreement shall be deemed to have been granted hereunder until the applicant and the city have fully executed a written agreement approved by the city council setting forth the particular terms and provisions under which the grantee has been granted the right to occupy and use public ways of the city and the applicant has provided the security deposits and proof of insurance as required by Chapter 20.10 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.060 Nonexclusive public way agreements.
No public way agreement granted under this title shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the city for delivery of telecommunications services or any other purposes. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.070 Rights granted.
No public way agreement granted under this title shall convey any right, title or interest in the public ways, but shall be deemed an authorization only to use and occupy the public ways for the limited purposes and term stated in the public way agreement. Further, no public way agreement shall be construed as any warranty of title. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.080 Term of telecommunications public way agreements.
By virtue of the uncertainties created by the Act, unless otherwise specified in an existing public way agreement, no agreement granted hereunder shall be in effect for a term exceeding five years. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.090 Specified route.
A public way agreement granted under this title shall be limited to a use of public ways specified and defined in the agreement. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.100 Service to city users.
A grantee shall be permitted to use public ways to offer or provide utility or telecommunications services to persons or areas within the city only upon city council approval of a telecommunications franchise agreement pursuant to this title. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.110 Amendment to public way agreements.
A new application shall be required of any commercial utility or telecommunications provider who desires to extend or locate its facilities in public ways of the city which are not included in a public way agreement previously granted under this title. If a grantee is required by the city to locate or relocate its facilities in public ways not included in a previously granted public way agreement, the city shall grant an amendment to the agreement without further application. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.120 Renewal of public way agreements.
A provider that desires to renew its public way agreement in effect under this chapter for an additional term not to exceed five years shall, not more than 180 days nor less than 120 days before expiration of the public way agreement in effect, file an application, which is determined as complete in accordance with ACC 20.04.030, with the city for renewal which shall include the following:

A. The information required pursuant to ACC 20.04.020;

B. Any information required pursuant to the public way agreement between the city and the grantee;

C. All deposits or charges required pursuant to this chapter; and

D. A nonrefundable application fee of $75.00. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.130 Determination by city for renewal of public way agreements.
The process specified in ACC 20.04.030 for determining and notifying the applicant of completeness of application shall

be used for renewals. Within 120 days after receiving a complete application for renewal, following the procedures in ACC 20.04.040, the city council shall grant or deny the renewal application in whole or in part. If the renewal application is denied, the written determination shall include the reason(s) for denial. The decision to grant or deny an application for the renewal of a public way agreement shall, in addition to the criteria set forth in ACC 20.04.040, be based upon the following:

A. The continuing capacity of the public ways to accommodate the applicant's existing facilities; and

B. The applicant's compliance with the requirements of this title and the public way agreement. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.140 Notification of council action on renewal of public way agreements and execution of agreements.
Once the city council has decided on the renewal application, the procedures outlined in ACC 20.04.050 shall be followed for execution of any agreement renewals. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.150 Obligation to cure as a condition of renewal.
No public way agreement shall be renewed until any ongoing violations or defaults in the grantee's performance under the public way agreement, or of the requirements of this title, have been cured, or a plan, secured by a sufficient bond or deposit of funds to the city's satisfaction, detailing the corrective action to be taken by the grantee has been approved in writing by the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.160 Reserved.
(Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.170 Annual fee for recovery of city costs.
Each public way agreement granted under this title is subject to the city's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid as reimbursement for the city's costs in connection with reviewing, inspecting and supervising the use and occupancy of the public ways on behalf of the public and existing or future users; provided further, that the compensation required from any utility or telecommunications provider or carrier engaged in the "telephone business," as defined in RCW 82.04.065 shall be consistent with RCW 35.21.860. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.04.180 Other city costs.
All grantees shall, within 30 days after written demand, reimburse the city for all direct and indirect costs and expenses incurred by the city in connection with any modification, amendment, renewal or transfer of the public way agreement. In addition, all grantees shall, within 30 days after written demand, reimburse the city for any and all costs the city reasonably incurs in response to any emergency involving the grantee's facilities. All grantees shall, within 30 days after written demand, reimburse the city for the grantee's proportionate share of all actual, identified expenses incurred by the city in planning, constructing, installing, repairing or altering any city facility as a result of the construction or the presence in the public ways of the grantee's facilities. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

CHAPTER 20.06
FRANCHISE
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20.06.180 Compensation for use of public ways.
20.06.190 Accounts, books and records.

20.06.010 Franchise requirements.

A franchise shall be required of any commercial utility or telecommunications operator or carrier or other person who desires to occupy public ways of the city and to provide telecommunications or commercial utility services to any person or area in the city; provided, however, that a public way agreement may be approved in accordance with the provisions of this title instead of a franchise in the following circumstances:

A. A privately owned telecommunications network or telecommunications system which is operated solely for purposes of serving itself. An example of such a network or telecommunications system includes, but is not limited to, a

telecommunications network connecting two business facilities under common ownership or control, when said facilities are not offered to other business entities or persons.

B. De minimus uses of public ways made in conjunction with a wireless telecommunications facility located entirely upon publicly or privately owned property. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.020 Franchise applications.

Any person who desires a telecommunications or a commercial utility franchise pursuant to this title shall file an application with the city public works department which, in addition to the information required by ACC 20.04.020, shall include the following:

A. Whether the applicant intends to provide cable service, video dialtone service or other video programming service, and sufficient information to determine whether such service is subject to cable franchising;

B. An accurate map showing the location of any existing utility or telecommunications facilities in the city that applicant intends to use or lease so that the city can keep track of various systems using the public way(s) to prevent interference between the users;

C. A description of the services or facilities that the applicant will offer or make available to the city and other public, educational and governmental institutions, if any;

D. A description of applicant's service, access and line extension policies;

E. The area or areas of the city the applicant desires to serve and an initial schedule for build-out to the entire franchise area;

F. The applicant's intended means and methods of providing service and whether shared use of other utility poles or conduits is envisioned;

G. All fees, deposits or charges required pursuant to this chapter;

H. Such other and further information as permitted by federal and state law as may be requested by the city;

I. Proof of ability to meet city's bonding requirements in ACC 12.24.050 when the applicant does not have an existing standing bond on file with the city sufficient to cover the scope of work proposed and proof of ability to meet security requirements in ACC 20.10.240 through 20.10.260;

J. A copy of an Auburn business registration stamped and signed by the city clerk; and

K. A nonrefundable application fee in the amount of $2,500. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.030 Notice of complete application and scheduling of public hearing.

A. Notice of Complete Application. Within 30 calendar days after receipt of the franchise application, the city will complete review of the application to determine whether the application contains sufficient information as outlined in ACC 20.06.020 to proceed with processing. If during the 30-calendar-day review period, the city engineer determines that the application is incomplete, the city engineer will issue a letter to the applicant specifying the

additional information necessary to complete the application. The applicant will be given 30 calendar days to respond. Once the additional information is received by the city, an additional 14 calendar days will be allowed to determine whether the application is complete. Once the application is determined complete, written notice will be provided. If the applicant needs additional time to respond the applicant may request up to an additional 30 calendar days. If a response is not timely received, the application will be returned to the applicant with a notice that the application is rejected due to failure to provide the required information. Any new applications will require a new application fee.

B. Scheduling of Public Hearing. When satisfied that the application is complete, the city engineer will notify the applicant in writing that the application is complete and inform the applicant of the schedule for consideration by the public works committee. The public works committee shall review the proposal to include the planned use of the public ways and recommend any modifications required prior to recommending setting the public hearing by the city council. Once satisfied as to the terms of the negotiated draft franchise agreement, the public works committee shall recommend that the city council set the date for the public hearing. The city council will schedule the hearing and the city clerk will notify the applicant in writing of the scheduled hearing. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.040 Determination by the city.

Within 180 calendar days from the time of notification that the application is complete, under ACC 20.06.030(A), the city shall issue a written determination granting or denying the application in whole or in part. Prior to granting or denying a franchise under this title, the city council shall

conduct a public hearing and make a decision based upon the criteria set forth below. Pursuant to Section 253(c) of the Federal Act, public disclosure of any fees as compensation for use of public right-of-way is required, and RCW 35A.47.040 provides that the city council shall not approve any franchise hereunder until the next regularly scheduled council meeting following the public hearing. If the application is denied, in whole or in part, the written determination shall include the reason(s) for denial. The decision to grant or deny, in whole or in part, an application for a telecommunications franchise shall be based upon the following:

A. Whether the applicant has received all requisite licenses, certificates, and authorizations from the Federal Communications Commission, the Washington Utilities and Transportation Commission, and any other federal or state agency with jurisdiction over the activities proposed by the applicant;

B. The capacity of the public ways to accommodate the applicant's proposed facilities;

C. The capacity of the public ways to accommodate additional utility and telecommunications facilities if the franchise is granted;

D. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the franchise is granted;

E. The public interest in minimizing the cost and disruption of construction within the public ways;

F. The service that applicant will provide to the community and region;

G. The effect, if any, on public health, safety and welfare if the franchise requested is granted;

H. The availability of alternate routes and/or locations for the proposed facilities;

I. Applicable federal and state utility and telecommunications laws, regulations and policies;

J. The ability to avoid, or mitigate to the city's satisfaction, future conflicts with the operation, repair, replacement, and maintenance of city-owned and other commercial utilities;

K. The ability of the applicant to stabilize existing pavement structures prior to disturbance in a manner sufficient to ensure future deterioration is not accelerated by virtue of the installed facilities, and/or the ability and willingness of the applicant to fully mitigate such damages to the extent that they may prove unavoidable to the satisfaction of the city. Such security for the pavement's integrity may include additional periods of warranty bonding for up to five years from date of completion of work as determined by the city engineer;

L. Demonstrated ability and commitment to meet city bonding and security requirements established in ACC 20.10.240 through 20.10.260 and Chapter 12.24 ACC; and

M. Such other factors as may demonstrate that the franchise to use the public ways will serve the community interest. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.050 Notification of council action and execution of franchise.

Upon the city council's decision the public works director shall notify the applicant of the decision, including

reason(s) for any denial, and instruct the applicant of the procedure to follow to complete execution of the agreement if approved by the city council. No franchise shall be deemed to have been granted hereunder until after the public hearing and city council approval of a written agreement setting forth the particular terms and provisions under which the franchisee has been granted the right to occupy and use public ways of the city and both the city and applicant have fully executed the franchise and the applicant has provided the security deposits and proof of insurance as required by Chapter 20.10 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.060 Nonexclusive franchise.

No franchise granted under this title shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the city for delivery of utility or telecommunications services or any other purposes. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.070 Term of franchise.

By virtue of the uncertainties created by the Act, unless otherwise specified in an existing franchise agreement, a telecommunications franchise granted by the city pursuant to this title shall be valid for a term not to exceed five years. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.080 Rights granted.

No franchise granted under this chapter shall convey any right, title or interest in the public ways, but shall be deemed a franchise only to use and occupy the public ways for the limited purposes and term stated in the franchise. Further, no franchise shall be construed as any warranty of title. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.090 Franchise territory.
Unless otherwise provided in the franchise ordinance, a franchise granted under this chapter shall authorize the franchisee to operate in the public ways throughout the city when a permit to install the necessary facilities has been approved by the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.100 Franchise fees in addition to utility taxes.
Revenue derived directly or indirectly from sources within the city shall be subject to applicable utility taxes as of the time of commencement of such operations. Franchise fees shall be in addition to any utility tax, but shall be collectible only to the extent as then allowed by law, and in no event may the combined utility tax and franchise fee exceed six percent of gross revenue. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.110 Nondiscrimination.
A franchisee which purports to serve the general public shall make its utility or telecommunications services available to any customer within its franchise area who shall request such service, without discrimination as to the terms, conditions, rates or charges for the franchisee's services; provided, however, that nothing in this title shall prohibit a franchisee from making any reasonable classifications among differently situated customers. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.120 Amendment of franchise.
Except as otherwise provided within an existing franchise ordinance, a new franchise application shall be required of any commercial utility or telecommunications carrier or operator that desires to extend its franchise territory or to locate its utility or telecommunications facilities in public ways of the city which are not included in a franchise

previously granted under this title. If a franchisee is required by the city to locate or relocate its facilities in public ways not included in a previously granted franchise, the city shall grant a franchise amendment without further application. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.130 Renewal of franchise.

A franchisee that desires to renew its franchise under this chapter for an additional five-year term shall, not more than 240 days nor less than 180 days before expiration of the franchise in effect, file an application, which is determined as complete in accordance with ACC 20.06.030, with the city for a renewal of its franchise which shall include the following:

A. The information required pursuant to ACC 20.06.020;

B. Any information required pursuant to the franchise agreement between the city and the franchisee;

C. All deposits or charges required pursuant to this chapter;

D. A nonrefundable application fee in the amount of $500.00. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.140 Determination by city for renewal of franchise.

The process specified in ACC 20.06.030 for determining and notifying of completeness of application shall be used for renewals. Within 120 calendar days after receiving a complete application for renewal, following the procedures in ACC 20.06.030, the city council shall grant or deny the renewal application in whole or in part. If the renewal application is denied, the written determination shall include the reason(s) for denial. Prior to granting or denying renewal of a franchise under this chapter, in whole

or in part, the city council shall conduct a public hearing and make a decision based upon the criteria set forth below in addition to all criteria in ACC 20.06.040.

A. The continuing capacity of the public ways to accommodate the applicant's existing facilities.

B. The applicant's compliance with the requirements of this title and the franchise agreement.

C. Applicable federal, state and local utility and telecommunications laws, rules and policies.

D. Such other factors as may demonstrate that the continued franchise to use the public ways will serve the community interest. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.150 Obligation to cure as a condition of renewal.
No franchise shall be renewed until any ongoing violations or defaults in the franchisee's performance of the franchise agreement, or of the requirements of this title, have been cured, or a plan detailing the corrective action to be taken by the franchisee has been approved in writing by the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.160 Reserved.
(Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.170 Other city costs.
All franchisees shall, within 30 days after written demand, reimburse the city for all direct and indirect costs and expenses incurred by the city in connection with any modification, amendment, renewal or transfer of the franchise or any franchise agreement. In addition, all franchisees shall, within 30 days after written demand,

reimburse the city for any and all costs the city reasonably incurs in response to any emergency involving the franchisee's utility or telecommunications facilities. Finally, all franchisees shall, within 30 days after written demand, reimburse the city for the franchisee's proportionate share of all actual, identified expenses incurred by the city in planning, constructing, installing, repairing or altering any city facility as a result of the presence in the public way of the franchisee's utility or telecommunications facilities. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.180 Compensation for use of public ways.

A. The city finds that the public ways to be used by commercial utilities and carriers and operators in the operation of telecommunications systems within the boundaries of the franchise are valuable public properties, acquired and maintained by the city at great expense to its taxpayers, and that the grant of use of said public ways is a valuable property right, without which grantees and franchisees would be required to invest substantial capital in public way costs and acquisitions; therefore, grantees and franchisees shall pay the city as a general compensation for the use of the public way during each year of the term of a franchise a franchise fee as determined by city council, not to exceed six percent of gross revenues for each quarter of each calendar year. Franchisees shall pay the franchise fee mandated by this chapter but the city acknowledges and understands that such amount (and any other fees, assessments, or taxes imposed on franchisees not described in ACC 20.06.180(E)) shall appear as a line item on the bill sent to, and shall be collected from, the subscribers; provided further, that the compensation required from any telecommunications operator or carrier engaged in the "telephone business," as defined in RCW 82.04.065 shall be consistent with RCW 35.21.860.

B. Annual Franchise Fee Adjustments. The initial annual franchise fee percentage shall be four and one-half percent of gross revenues unless and until it is further adjusted by city council. Any such adjustment shall occur at least 60 days before any subsequent annual anniversary date. Any adjustment shall become effective on the subsequent annual anniversary date.

C. Quarterly Payment. Franchisees shall forward by check wire transfer an amount equal to this quarterly payment by the fifteenth day of the second calendar month immediately following the close of the calendar quarter for which the payment is calculated.

D. Late Payment. In the event any quarterly payment is made after noon on the date 10 days after the date due, franchisees shall pay a late payment penalty of the greater of:

1. Twenty-five dollars; or

2. Simple interest at a 12 percent annual percentage rate on the total amount past due.

E. Fees and Compensation Not a Tax. The fees, charges and fines provided for in this title and any compensation charged and paid for the franchisee's use of the city's public ways, whether "fiduciary or in kind", are separate from, and additional to, any and all federal, state, local and city taxes as may be levied, imposed or due from a commercial utility, telecommunications carrier, operator, or provider, its customers or subscribers or on account of the lease, sale, delivery or transmission of utility or telecommunications services.

F. Ruling of Unenforceability. The compensation required from any commercial utility, telecommunications carrier,

operator, or provider shall be as provided by law. In the event any franchise fee shall be held unenforceable by a court of law which has jurisdiction over the city, franchisees shall pay the equivalent amount paid in franchise fees as a city utility tax which, shall be applied retroactively to time periods during which the franchise fee was determined to be unenforceable.

G. Quarterly Report. In order to properly determine the gross revenues received by franchisees, the franchisee shall on the same date that each quarterly payment is made, file with the director of finance a sworn copy of a report, in a form acceptable to the city, in sufficient detail to itemize revenues from each of the revenue categories. The city may, if it sees fit and at its own expense, have the books and records of franchisees examined by a representative of said city to ascertain the correctness of the reports agreed to be filed herein. Neither the acceptance of any payment nor any subsequent review shall be deemed an agreement by the city that the correct payment was paid, absent a fully authorized written release by the city on any such payments or on such reports. Any necessary prorations shall be made in the first and last year of each term of the franchise. Any city request for access to books and records shall be allowed by the franchisee at reasonable times and for reasonable purposes. Such information shall be held in strict confidence by the city as allowed by law and used only for the purpose stated herein.

H. Recalculation at End of Compensation Year. At the end of each calendar year, franchisees shall recalculate the total general compensation actually due. If additional amounts are due the city by franchisee, said amounts shall be paid by the fifteenth day of February following the calendar year during which such amounts were originally due. If amounts are found to be due the franchisees by the city,

said amounts shall be credited by the fifteenth day of February during which such amounts were originally due. Any necessary prorations will be made.

I. Taxes are Not to Be a Credit. The compensation paid under this franchise shall be exclusive of and in addition to all special assessments and taxes of whatever nature which are applicable to all other persons or entities doing business within the city, including, but not limited to, ad valorem tax, sales tax, corporate or business occupation taxes or other taxes or fees imposed or levied by any governmental entity.

J. Utility Tax Liability – Franchise Fees. Revenues derived directly or indirectly from sources within the city shall be subject to applicable utility taxes as of the time of commencement of such operations. Franchise fees shall be in addition to any utility tax, but shall be collectible only to the extent as then allowed by law, and in no event may the combined utility tax and franchise fee exceed six percent of gross revenues in accordance with RCW 35.21.870. Franchise fees, if applicable, shall be levied on a nondiscriminatory basis.

K. Rights of City. Payment of money under any franchise shall not in any way limit or inhibit any of the privileges or rights of the city, except insofar as city's privileges or rights are expressly limited or inhibited by the terms of a franchise.

L. Annual Report. Franchisees shall file annually with the director of finance no later than 90 days after the end of franchisee's fiscal year, an unaudited statement of revenues (for that fiscal year just ended) attributable to the operations of the franchisee's telecommunications system, within the city pursuant to the franchise agreement. The

statement shall present a detailed breakdown of gross revenues and uncollectible accounts for the year. The city may, if it sees fit, have such report audited by an independent certified public accountant of its choosing. If the audit reveals an underpayment error in payment by franchisees of more than five percent, then franchisees shall pay for the costs of the audit. If the audit reveals an error in payment of five percent or less, the city shall pay the costs of the audit. The report will summarize those accounts reconciled to be within the franchise area by the city's quarterly review.

M. Circumventing Payments. Any transaction(s) which have the effect of circumventing payment of the required franchise fees and/or evasion of payment of franchise fees or any payments due the city under a franchise by noncollection or nonreporting of gross revenues, bartering, or any other means which evade the actual collection of revenues for business pursued by franchisees are prohibited.

N. Best Rates. As allowed by applicable law, part of the compensation to the city for the grant of any telecommunications franchise, the city shall be entitled to obtain subscriptions, at the city's discretion, to the communications service at franchisee's lowest comparable rate applicable to any government body or municipality of the state of Washington. In addition, city shall be entitled to franchisee's lowest comparable rate applicable to any governmental body or municipality of the state of Washington for purchase and/or lease, should the city determine to purchase and/or lease, equipment or modems applicable to government bodies or municipalities in the state of Washington for purposes of accessing the communications service. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.06.190 Accounts, books and records.

The franchisee shall keep the city fully informed as to accounting methods and procedures in connection with the recording and reporting by the franchisee of all revenues and uncollectibles.

A. City to Be Informed. Franchisees shall keep the city fully informed as to all matters in connection with or which may affect the construction, reconstruction, removal, maintenance, operation and repair of franchisee's system located in public way(s), franchisee's accounting methods and procedures in connection therewith, and the recording and reporting by franchisees of all revenues and uncollectibles. Franchisees shall comply with the city's determination regarding forms for reports, the time for reports, the frequency with which any reports are to be made, and whether reports are to be made under oath. The city acknowledges that a franchisee may be a reporting company under the Securities Exchange Act of 1934 and that shares of its stock are publicly traded. As such, a franchisee may be precluded from disclosing certain sensitive, nonpublic information by virtue of rules and regulations promulgated under such act or otherwise.

B. Accounts. The franchisee shall keep complete and accurate books of account and records of its business and operations subject to this franchise chapter in accordance with generally accepted accounting principles or in accordance with accounting rules prescribed by applicable federal or state regulatory agencies. The city may require the keeping of additional records or accounts which are reasonably necessary for purposes of identifying, accounting for, and reporting gross revenues and uncollectibles. All subscribers who report a service address in the city of Auburn shall be subject to taxes and fees

under this franchise. When required by the city, the franchisee shall make available a complete list of all service addresses within the city of Auburn. This list shall be available for review by the city at a local franchisee's business office. The list will be provided on a computer disc in ASCII format sorted by zip code. It is understood this data is only needed for Auburn to perform an audit to ascertain that the correct subscribers are subjected to Auburn taxes and fees. As the city annexes new areas, those zip codes, if any, will be added.

C. Access to Records. The franchisee shall provide the city with access at reasonable times and for reasonable purposes, to examine, audit, review and/or obtain copies of the papers, books, accounts, documents, maps, plans and other records of the franchisee pertaining to this franchise chapter. The franchisee shall fully cooperate in making available its records and otherwise assisting in these activities. Such information shall be held in strict confidence by the city, as allowed by law, and used only for the purpose stated herein.

D. Inquiries to Franchisee. The city may, at any time, make inquiries pertaining to the franchisee's operation of its utility or telecommunications system within the franchise area. The franchisee shall respond to such inquiries on a timely basis. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

CHAPTER 20.08
FACILITIES LEASE

Sections:

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20.08.010 Facilities lease.

The city council may, in its sole discretion, which is hereby reserved, approve facilities leases for the location of commercial utility or telecommunications facilities and other nontelecommunications facilities upon city property, as that term is defined in this title. Neither this chapter, nor any other provision of this title shall be construed to create an entitlement or vested right in any person or entity of any type to the use of any city property or city facility. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.08.020 Lease application.

Any person that desires to solicit the city's approval of a facilities lease pursuant to this title shall file a lease proposal with the city which, in addition to the information required by ACC 20.06.020, shall include the following:

A. A description of the facilities or other equipment proposed to be located upon city property;

B. A description of the city property upon which the applicant proposes to locate facilities or other equipment;

C. Preliminary plans and specifications in sufficient detail to identify:

1. The location(s) of existing telecommunications facilities or other equipment upon the city property, whether publicly or privately owned.

2. The location and source of electric and other utilities required for the installation and/or operation of the proposed facilities or equipment;

D. Accurate scale conceptual drawings and diagrams of sufficient specificity to analyze the aesthetic impacts of the proposed telecommunications facilities or other equipment;

E. If applicant is proposing to install aboveground and/or overhead facilities:

1. Evidence that surplus space is available for locating its telecommunications facilities on existing utility poles along the proposed route;

2. Proof of compliance with city's zoning code;

F. Whether the applicant intends to provide cable service, video dialtone service or other video programming service, and sufficient information to determine whether such service is subject to cable franchising;

G. An accurate map showing the location of any existing utility or telecommunications facilities in the city that applicant intends to use or lease;

H. A description of the services or facilities that the applicant will offer or make available to the city and other public, educational, and governmental institutions;

I. A copy of an Auburn business registration stamped and signed by the city clerk;

J. Proof of ability to meet city's bonding requirements in Chapter 12.24 ACC when the applicant does not have an existing standing bond on file with the city sufficient to cover the scope of work proposed and proof of ability to meet the city's security requirements in ACC 20.10.240 through 20.10.260;

K. A nonrefundable application fee in the amount of $500.00; and

L. Such other and further information as may be requested by the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.08.030 Notice of complete application and scheduling of public hearing.

A. Within 30 calendar days the city will complete an initial review of the application to determine whether the application contains sufficient information as outlined in ACC 20.08.020 to proceed with processing. Once satisfied that the proposal is clear, the mayor will appoint a negotiation team to meet with the applicant and determine whether additional information is needed. The team shall as a minimum consist of the finance director, a legal representative, and the department director affiliated with the property being considered for lease. If during the 30-calendar-day review period, the application is deemed incomplete, the city will issue a letter to the applicant specifying the additional information necessary in order to proceed with processing. The applicant will be given 30

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J. The potential for radio frequency and other interference or impacts upon residential, commercial, and other uses located within the vicinity of the city property.

K. Whether the city's property zoning supports the proposed land use.

L. Demonstrated ability and commitment to meet city bonding and security requirements established in ACC 20.10.240 through 20.10.260.

M. Such other factors as may demonstrate that the lease to use the city property will serve the community interest.

N. Other criteria determined to be necessary or appropriate to the public health, safety, or welfare of the community. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.08.050 Notification of council action and execution of lease.

Upon the city council's decision, the finance director shall notify the applicant of the decision and instruct the applicant of the procedure to follow to complete execution of the lease agreement if approved by the city council. No facilities lease shall be deemed to have been granted hereunder until after any scheduled public hearing and city council approval of a written agreement setting forth the particular terms and provisions under which the lessee has been granted the right to occupy and use the city property specified in the lease and both the city and applicant have fully executed the lease and the applicant has provided the security deposits and proof of insurance as required by Chapter 20.10 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.08.060 Nonexclusive lease.
No facilities lease granted under this title shall confer any exclusive right, privilege, license, or franchise to occupy or use city property for delivery of utility or telecommunications services or any other purposes. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.08.070 Term of facilities lease.
By virtue of the uncertainties created by the Act, except as provided in an existing lease agreement, a facilities lease granted hereunder shall be valid for a maximum term of five years, subject to renewal as provided in this chapter. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.08.080 Rights granted.
No facilities lease granted under this chapter shall convey any right, title or interest, of any kind, in the city property, but shall be deemed a license only to use and occupy the city property for the limited purposes and term stated in the lease agreement. Further, no facilities lease shall be construed as any warranty of title. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.08.090 Interference with other users.
No facilities lease shall be granted under this title unless it contains a provision which is substantially similar to the following:

> The City has previously entered into leases with other tenants for their equipment and telecommunications facilities. Lessee acknowledges that the City is also leasing the City property for the purposes of transmitting and receiving telecommunications signals from the City property. The City, however, is not in any way responsible or liable for any interference with

Lessee's use of the City property which may be caused by the use and operation of any other tenant's equipment, even if caused by new technology. In the event that any other tenant's activities interfere with the Lessee's use of the City property, and the Lessee cannot work out this interference with the other tenants, the Lessee may, upon 30 days' notice to the City, terminate this Lease and restore the City property to its original condition, reasonable wear and tear excepted. The Lessee shall cooperate with all other tenants to identify the causes of, and work towards the resolution of, any electronic interference problem. In addition, the Lessee agrees to eliminate any radio or television interference caused to City-owned or other public/private facilities or surrounding property owners, residents, or tenants at Lessee's own expense and without installation of extra filters on City-owned equipment. Lessee further agrees to accept such interference as may be received from City operated telecommunications or other facilities located upon the City property subject to this Lease.

(Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.08.100 Ownership and removal of improvements. No facilities lease shall be granted under this title unless it contains a provision which states that all buildings, landscaping, and all other improvements, except lessee's equipment, shall become the property of the city upon expiration or termination of the lease. In the event that the city requires removal of such improvements, such removal shall be accomplished at the sole expense of the lessee and completed with full restoration of the site to the original condition or its practical equivalent as determined by the city, within 90 days after receiving written notice from the

city requiring removal of the improvements. Further, in the event that utility or telecommunications facilities or other equipment are left upon city property after expiration or termination of the lease, they shall become the property of the city if not removed by the lessee after 30 days' written notice from the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.08.110 Cancellation of lease by lessee.

A. All facilities leases are contingent upon the prospective lessee obtaining all necessary permits, approvals, and licenses for the proposed facilities. In the event that the prospective lessee is unable to obtain all such permits, approvals, and licenses, it may cancel its lease, and obtain a pro rata refund in any rents paid, without further obligation by giving 30 days' prior written notice to the city.

B. In the event that the holder of a facilities lease determines that the city property is unsuitable for its intended purpose, the lessee shall have the right to cancel the lease upon 120 days' written notice to the city. However, no prepaid rent shall be refundable. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.08.120 Compensation to the city.

Each facilities lease granted under this title is subject to the city's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for the rights granted to a lessee; provided, nothing in this title shall prohibit the city and a lessee from agreeing to the compensation to be paid. Such compensation shall be payable in advance of the effective date of the lease and on or before January 31st of each calendar year. Any payments received after the due date shall include a late payment penalty of two percent of the annual rental fee for each day

or part thereof past the due date. If any or all of the rental fee is more than 60 calendar days delinquent, the lease will automatically terminate on the sixty-first calendar day of delinquency, and the city may proceed to collect against any security provided by the lessee. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.08.130 Amendment of facilities lease.

Except as provided within an existing lease agreement, a new lease application and lease agreement shall be required of any lessee that desires to expand, modify, or relocate its facilities or other equipment located upon city property. If the lessee is required by the city to locate or relocate its facilities or other equipment on the city property, the city shall grant a lease amendment without further application. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.08.140 Renewal of facilities lease.

A lessee that desires to renew its facilities lease in effect under this chapter shall, not more than 120 days nor less than 90 days before expiration of the facilities lease then in effect, file an application, which is determined as complete in accordance with ACC 20.08.030, with the city for renewal of its facilities lease which shall include the following:

A. The information required pursuant to ACC 20.08.020;

B. Any information required pursuant to the facilities lease agreement between the city and the lessee;

C. All deposits or charges required pursuant to this chapter;

D. A nonrefundable application renewal fee in the amount of $250.00. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.08.150 Determination by the city for renewal of facility lease.

All renewals of leases subject to this title shall be renewed in accordance with the provisions of ACC 20.08.030 and 20.08.040. Recognizing that the city council is under no obligation to approve a renewal of a facilities lease for the use of city property, the city council shall attempt to consider and take action on applications for renewal of such leases within 90 days after receiving a complete application for such a lease renewal. When such action is taken, the city shall issue a written determination granting or denying the lease renewal, in whole or in part. If the renewal application is denied, the written determination shall include the reason(s) for denial. The decision to grant or deny an application for renewal of a facilities lease shall be based upon, but not limited to, the following:

A. The continuing capacity of the city property to accommodate the applicant's existing facilities.

B. The applicant's compliance with the requirements of this title and the lease agreement.

C. Such other factors as may demonstrate that the continued approval to use the city property ways will serve the community interest.

D. Any criteria contained in ACC 20.08.040. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.08.160 Obligation to cure as a condition of renewal.

No facilities lease shall be renewed until any ongoing violations or defaults in the lessee's performance of the lease agreement, or of the requirements of this title, have been cured, or a plan, secured by bond or deposit account to the city's satisfaction, detailing the corrective action to be

taken by the lessee has been approved in writing by the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

CHAPTER 20.10
CONDITIONS OF PUBLIC WAY AGREEMENTS, FRANCHISES, AND FACILITIES LEASES

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20.10.010 Purpose.

The purpose of this chapter is to set forth certain terms and conditions which are common to all public way agreements, franchises, and facilities leases granted under the provisions of this title. Except as otherwise provided in this chapter or in such a public way agreement, franchise, or lease, the provisions of this chapter apply to all such public way agreements, franchises, and leases approved or granted by the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.020 Acceptance and effective date.

No public way agreement, franchise, or lease granted pursuant to the provisions of this title shall become effective unless and until the ordinance or other city action granting the same has become effective. Within 30 days after the effective date of the ordinance or other city action granting a public way agreement, franchise, or lease, or within such extended period of time as the council in its discretion may authorize, the applicant shall file with the city clerk an unconditional written acceptance of the public way agreement, franchise, or lease, in a form satisfactory to the city attorney, together with the bonds, insurance policies, and security fund required by this title. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.030 Police power.

In accepting and executing any public way agreement, franchise or lease, the grantee, franchisee, or lessee acknowledges that its rights thereunder are subject to the legitimate rights of the police power of the city to adopt and enforce general ordinances necessary to protect the safety, health, and welfare of the public, and agrees to comply with all applicable general laws enacted by the city pursuant to such power. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.040 Rules and regulations by the city.

In addition to the inherent powers of the city to regulate and control any public way agreement, franchise, or lease granted, the authority granted to the city by the Cable Act and the Telecommunications Act of 1996, and those powers expressly reserved by the city, or agreed to and provided for in any public way agreement, franchise, or lease, the right and power is hereby reserved by the city to promulgate such additional regulations as it may find

necessary in the exercise of its lawful powers giving due regard to the rights of grantees, franchisees, and lessees. Except as provided in this title, the foregoing does not allow for amendment by the city of material terms of any public way agreement, franchise, or lease granted without the written consent of the grantee, franchisee, or lessee. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.050 Location of facilities.

All facilities shall be constructed, installed, and located in accordance with the following terms and conditions, unless otherwise specified in a public way agreement, franchise, or lease agreement.

A. Unless otherwise provided in a public way agreement, franchise, or lease, a grantee, franchisee, or lessee with permission to occupy a public way must locate its cable or telecommunications facilities underground in accordance with ACC Title 18 and Chapter 13.32 ACC.

B. Any newcomer in the public way must bear the full cost of discovering the location of any existing conflicts, coordination of the engineering plans to acquire the approvals of parties already in the public way, and relocating and/or mitigating such conflicts with preexisting facilities in conflict with the plans of the newcomer.

C. Whenever the city requires, a grantee, franchisee, or lessee subject to this title, that currently occupies the public way shall relocate its facilities underground at no expense to the city. Such relocation shall be made concurrently with other planned work to minimize the disruption of the public ways as determined by the city engineer.

D. Should the available capacity of public ways prevent new uses in the future, all persons subject to this title shall

negotiate with any interested newcomer the means of creating new capacity as required by federal or state law. The parties shall arrive at a mutually supportable agreement and submit the same to the city for review and comment. The parties will incorporate any reasonable city requirements for approval, and resubmit the revised proposal for city council approval. If approved by the city council, the parties will bear all costs associated with the proposal, and obtain the necessary permits to execute the approved plan from the city in accordance with this title and Chapter 12.24 ACC. The city shall bear no costs associated with resolution of capacity shortages within the public ways. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.060 Compliance with One Number Locator Service.

All grantees, franchisees, and lessees shall, before commencing any construction in the public ways, comply with all regulations of Chapter 19.122 RCW, the One Number Locator Service. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.070 Construction permits.

All grantees of public way agreements, franchisees, and lessees of city properties are required to obtain construction permits, as required in Chapter 12.24 ACC, for installing utility, cable and telecommunications facilities. However, nothing in this title shall prohibit the city and a grantee, franchisee, or lessee from agreeing to alternative plan review, permit, and construction procedures for a public way agreement, franchise, or lease granted under this title, provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.080 Interference with the public ways.
No grantee, franchisee, or lessee may locate or maintain its utility, cable or telecommunications facilities so as to unreasonably interfere with the use of the public ways by the city, by the general public or by other persons authorized to use or be present in or upon the public ways. All such facilities which unreasonably interfere with the use of the city's public ways as determined by the public works director, shall be moved in accordance with provisions in ACC 20.10.130, by the grantee, franchisee, or lessee, at the grantee, franchisee, or lessee's cost, temporarily or permanently, as determined by the public works director. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.090 Damage to property.
No grantee, franchisee, or lessee, nor any person acting on behalf of a grantee, franchisee, or lessee shall take any action or permit any action to be taken which may impair or damage any city property, public ways of the city, other ways or other property, whether publicly or privately owned, located in, on or adjacent thereto. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.100 Notice of work.
Unless otherwise provided in a public way agreement, franchise, or lease agreement, no grantee, franchisee, or lessee, nor any person acting on behalf of the grantee, franchisee, or lessee shall commence any nonemergency work in or about the public ways of the city, other ways, or upon city property without 10 working days' advance written notice to the city which notice shall include the location of the work to be done, a detailed description of the work to be done, and a schedule for completion. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.110 Repair and emergency work.

In the event of an emergency, a grantee, franchisee, or lessee may commence such repair and emergency response work as required under the circumstances, provided the grantee, franchisee, or lessee shall notify the city in writing as promptly as possible, before such repair or emergency work commences or as soon thereafter as possible if advance notice is not practicable. The city may act without prior written notice in case of emergency. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.120 Maintenance of facilities.

Each grantee, franchisee, or lessee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.130 Abandonment, relocation or removal of facilities.

Within 30 days following written notice from the city, a grantee, franchisee, or lessee shall, at its sole expense, temporarily or permanently remove, relocate, change, or alter the position of any commercial utility, cable or telecommunications facilities within the public ways or upon city property whenever the city public works director shall have determined that such removal, relocation, change, or alteration is reasonably necessary for:

A. The construction, repair, maintenance, or installation of any city or other public improvement in or upon the public ways; and

B. The operations of the city, utility providers, or other governmental entity in or upon the public ways; and

C. Facilities are deemed by the city as abandoned due to failure to cure of the grantee, franchisee, or lessee.
However, in the event such relocation is required due to emergency repairs deemed necessary by the city, such relocation or moving shall be accomplished within 24 hours. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.140 Building moving.
Whenever any person shall have obtained permission from the city to use any street or public way for the purpose of moving any building, a grantee, franchisee, or lessee, upon seven calendar days' written notice from the city, shall raise or remove, at the expense of the person desiring to move the building, any of the grantee, franchisee, or lessee's utility wires, poles, or facilities which may obstruct the moving of such building; provided, that the person desiring to move the building shall comply with all requirements of the city for the moving of buildings. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.150 Removal of unauthorized facilities.
Within 30 days following written notice from the city, any commercial utility, telecommunications carrier, operator, lessee or other person who owns, controls, or maintains any unauthorized cable or telecommunications system, facility, or related appurtenances within the public ways or upon property of the city shall, at its own expense, remove such facilities or appurtenances from the public ways of the city. A utility, cable or telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

A. Upon expiration or termination of the grantee, lessee, or franchisee's public way agreement, franchise, or lease;

B. Upon leaving any system or facility within the public ways or upon property of the city, any such property of a grantee, franchisee, or lessee shall be deemed abandoned if left in place 90 days after expiration or termination of a public way agreement, franchise, or lease;

C. If the system or facility was constructed or installed without the prior approval of a public way agreement, franchise or lease;

D. If the system or facility was constructed or installed without the prior issuance of a required construction permit;

E. If the system or facility was constructed or installed at a location not permitted by a public way agreement, franchise or lease.

Provided, however, that the city may, in its sole discretion, allow a grantee, franchisee, or lessee or other such persons who may own, control, use, or maintain commercial utility, cable or telecommunications facilities within the public ways of the city or upon city property to abandon such facilities in place. No facilities of any type may be abandoned in place without the express written consent of the city. Any plan for abandonment or removal of a grantee's, franchisee's, or lessee's facilities must be first approved by the public works director, and all necessary permits must be obtained prior to such work. Upon permanent abandonment in place of the facilities such facilities shall become the city's property, and such persons shall submit to the city an instrument in writing, to be approved by the city attorney, transferring to the city the ownership of such property. The provisions of this section shall survive the expiration, revocation, or termination of a

public way agreement, franchise, or lease granted under this title. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.160 Emergency removal or relocation of facilities.

The city retains the right and privilege to cut or move any commercial utility, cable or telecommunications facilities located within the public ways of the city and upon city property, as the city may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The city shall not be liable to any utility, cable operator, telecommunications carrier, operator, or provider, or any other party for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the city's actions under this section. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.170 Damage to facilities.

Unless directly and proximately caused by the willful, intentional, or malicious acts by the city, the city shall not be liable for any damage to or loss of any commercial utility, cable, or telecommunications facilities upon city property or within the public ways of the city as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on such city property or within the public ways by or on behalf of the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.180 Restoration of public ways, other ways, city property and public/private utility property.

A. When a grantee, franchisee, lessee, or any person acting on behalf such persons, does any work in or affecting any public ways, other ways, city property, or public/private utilities located in the public ways, it shall, at its own expense, promptly remove any obstructions therefrom and

restore such ways or property to as good a condition as existed before the work was undertaken, unless otherwise directed by the city.

B. If weather or other conditions do not permit the complete restoration required by this section, or other city codes, regulations or policies, the grantee, franchisee, or lessee shall temporarily restore the affected public ways, other ways, or property. Such temporary restoration shall be at the grantee's, franchisee's, or lessee's sole expense and the grantee, franchisee, or lessee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

C. A grantee, franchisee, lessee or other person acting on behalf of such persons shall use suitable barricades, flags, flagmen, lights, flares, and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle, or property by reason of such work in or affecting such public ways, other ways, or property.

D. The public works director shall be responsible for inspection and final approval of the condition of the public ways, other ways, and city property following any construction and restoration activities therein. Further, the provisions of this section shall survive the expiration, revocation, or termination of a public way agreement, franchise, lease, or other agreement granted pursuant to this title or Chapter 12.24 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.190 Facilities maps.

Each grantee, franchisee, and lessee shall provide the city with a map or maps accurately reflecting the horizontal and

vertical location and configuration of all of their commercial utility or telecommunications facilities within the public ways and upon city property. Each grantee, franchisee, and lessee shall provide the city with updated maps annually or upon written request by the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.200 Duty to provide information.

Within 10 working days of a written request from the city, each grantee, franchisee, or lessee shall furnish the city with information sufficient to demonstrate:

A. That the grantee, franchisee, or lessee has complied with all requirements of this title; and

B. That all sales, utility and/or telecommunications or other taxes or assessments due the city in connection with the commercial utility, cable, or telecommunications services and facilities provided by the grantee, franchisee, or lessee have been properly collected and paid by the grantee, franchisee, or lessee.

All books, records, maps and other documents, maintained by the grantee, franchisee, or lessee with respect to its utility or telecommunications facilities within the public ways and upon city property shall be made available for inspection by the city at reasonable times and intervals; provided, however, that nothing in this section shall be construed to require a grantee, franchisee, or lessee to violate state or federal law regarding subscriber privacy, nor shall this section be construed to require a grantee, franchisee, or lessee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Such information shall be held in strict confidence, as allowed by law, by the city

and used only for the purpose stated herein. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.210 Leased capacity.

A grantee, franchisee, or lessee shall have the right to offer or provide capacity or bandwidth to its customers consistent with such permit, franchise, or lease; provided:

A. The grantee, franchisee, or lessee shall furnish the city with a copy of any such lease or agreement between the grantee, franchisee, or lessee and the customer or sub-lessee or provide to the city's finance director sufficient information to determine whether the lessee or customer is subject to city taxes or assessments; and

B. The sub-lessee fulfills all requirements of Chapters 5.82 and 5.88 ACC regarding the reporting of all revenues subject to city taxes and assessments; and

C. Lessee must comply with the city's registration requirements in Chapter 5.84 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.220 Insurance.

Unless otherwise provided in a public way agreement, franchise, or lease agreement, each grantee, franchisee, or lessee shall, as a condition of the permit or public way agreements, franchises, or leases, secure, and maintain the following liability insurance policies insuring both the grantee, franchisee, or lessee and the city, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to the grantee, franchisee, or lessee:

A. Comprehensive general liability insurance, written on an occurrence basis, with limits not less than:

1. Five million dollars for bodily injury or death to each person;

2. Five million dollars for property damage resulting from any one accident; and

3. Five million dollars for all other types of liability;

B. Automobile liability for owned, nonowned and hired vehicles with a limit of $3,000,000 for each person and $3,000,000 for each accident;

C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than $1,000,000;

D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than $3,000,000;

E. The liability insurance policies required by this section shall be maintained by the grantee, franchisee, or lessee throughout the term of the public way agreement, franchise, or lease, and such other period of time during which the grantee, franchisee, or lessee is operating without a public way agreement, franchise, or lease hereunder, or is engaged in the removal of its telecommunications facilities. The grantee, franchisee, or lessee shall provide an insurance certificate, together with an endorsement naming the city, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds, to the city prior to the

commencement of any work or installation of any utility or telecommunications facilities pursuant to said public way agreement, franchise, or lease. Any deductibles or self-insured retentions must be declared to and approved in writing by the city prior to the franchise becoming effective. Payment of deductibles and self-insured retentions shall be the sole responsibility of the grantee, franchisee, or lessee. The insurance certificate required by this section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The grantee, franchisee, or lessee's insurance shall be primary insurance as respects the city, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the city, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the grantee, franchisee, or lessee's insurance and shall not contribute with it;

F. In addition to the coverage requirements set forth in this section, each such insurance policy shall contain the following endorsement:

> It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 60 days after receipt by the City, by registered mail, (return receipt requested) of a written notice addressed to the City Clerk of such intent to cancel or not to renew.

G. Within 30 days after receipt by the city of said notice, and in no event later than 15 days prior to said cancellation or intent not to renew, the grantee, franchisee, or lessee shall obtain and furnish to the city replacement insurance policies meeting the requirements of this section. Any lapse in the required insurance coverage shall be cause for

termination of any public way agreement, franchise, or lease. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.230 General indemnification.

No public way agreement, franchise, or lease shall be deemed to be granted under this title unless it includes an indemnity clause substantially conforming to the following:

> The grantee, franchisee, or lessee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, engineers, and consultants from any and all claims, costs, judgments, awards, or liability to any person, including claims by the grantee, franchisee, or lessee's own employees to which the grantee, franchisee, or lessee might otherwise be immune under RCW Title 51, arising from injury or death of any person or damage to property of which the negligent acts or omissions of the grantee, franchisee, or lessee, its agents, servants, officers, or employees in performing under this Public Way Agreement, franchise, or lease are the proximate cause. The grantee, franchisee, or lessee further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, engineers, and consultants from any and all claims, costs, judgments, awards, or liability to any person including claims by the grantee, franchisee, or lessee's own employees, including those claims to which the grantee, franchisee, or lessee might otherwise have immunity under RCW Title 51, arising against the City solely by virtue of the City's ownership or

control of the rights-of-way or other public properties, by virtue of the grantee, franchisee, or lessee's exercise of the rights granted herein, or by virtue of the City's permitting the grantee, franchisee, or lessee's use of the City's rights-of-way or other public property, based upon the City's inspection or lack of inspection of work performed by the grantee, franchisee, or lessee, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this Public Way Agreement, franchise, or lease, or pursuant to any other permit or approval issued in connection with this Public Way Agreement, Franchise, or Lease. This covenant of indemnification shall include, but not be limited by this reference, claims against the City arising as a result of the negligent acts or omissions of the grantee, franchisee, or lessee, its agents, servants, officers, or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any public right-of-way or other public place in performance of work or services permitted under this Public Way Agreement, Franchise, or Lease.

Inspection or acceptance by the City of any work performed by the grantee, franchisee, or lessee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

In the event that the grantee, franchisee, or lessee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of the grantee, franchisee, or lessee, then the grantee, franchisee, or lessee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this indemnification clause.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the grantee, franchisee, or lessee, and the City, its officers, employees and agents, the grantee, franchisee, or lessee's liability hereunder shall be only to the extent of the grantee, franchisee, or lessee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the grantee, franchisee, or lessee's waiver of immunity under RCW Title 51, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this section shall survive the expiration or termination of any Public Way Agreement, Franchise, or Lease agreement.

Notwithstanding any other provisions of this Title, the grantee, franchisee, or lessee assumes the risk of damage to its facilities located in the City's public ways, rights-of-way, easements, and property from activities conducted by the City, its officers, agents, employees, and contractors. The grantee, franchisee, or lessee releases and waives any and all claims against the City, its officers, agents, employees, or contractors for damage to or destruction of the grantee, franchisee, or lessee's facilities caused by or arising out of activities conducted by the city, its officers, agents, employees, and contractors, in the public ways, rights-of-way, easements, or property subject to this Public Way Agreement, Franchise, or Lease, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful or malicious action on the part of the City, its officers, agents, employees, or contractors. The grantee, franchisee, or lessee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of the grantee, franchisee, or lessee's facilities as the result of any interruption of service due to damage or destruction of the user's facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, or contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful or malicious actions on the part of the City, its officers, agents, employees, or contractors.

(Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.240 Performance and construction surety.
Before a public way agreement, franchise, or lease granted pursuant to this title is effective, and as necessary thereafter, the grantee, franchisee, or lessee shall provide and deposit such moneys, bonds, letters of credit, or other instruments in form and substance acceptable to the city as may be required by this title or by an applicable public way agreement, franchise, or lease agreement. All performance bonds for grantees, franchisees, and lessees shall satisfy the minimum standards established by the public works department at the time of the grantees', franchisees', and lessees' application. (Construction bond section(s) of Standard Specifications for Road, Bridge, and Municipal Construction for Washington State Department of Transportation and American Public Works Association).
Construction bonds sureties shall be provided as required by Washington State laws. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.250 Security options.
In order to secure the conditions agreed to in any agreement negotiated under this title, for the full term of such agreements, each grantee, franchisee, or lessee shall establish a permanent security bond, assignment of funds, or an unconditional letter of credit from a Washington State bank with the city by either providing the city engineer a standing warranty bond or by depositing the amount of funds as follows in a Washington state bank utilizing the city's standard assignment form, or by provision of the letter of credit. The amount of security shall be 10 percent of the city engineer's estimate of the performance bond amount (ACC 20.10.260) based upon the total scope of work proposed within the public ways, or $50,000, whichever is less, or such lesser amount determined by the public works director to be sufficient. The security shall be maintained at the sole expense of the grantee, franchisee, or lessee so long

as any of the grantee, franchisee, or lessee's utility, cable or telecommunications facilities are located within the public ways of the city or upon city property and until released by the city. In the event a security involves a bank, the grantee, franchisee, or lessee is responsible for negotiating any interest that may accrue to the account during the duration of effect. Should the agreement being secured be terminated, the finance director will coordinate with other departments and determine if any portion of the security may be released by the city.

A. The security shall secure the full and complete performance of the requirements of this title, including any costs, expenses, damages, or loss the city pays or incurs, including civil penalties, because of any failure attributable to the grantee, franchisee, or lessee to comply with any applicable legal requirements including, but not limited to, the codes, ordinances, rules, regulations, or permits of the city.

B. Before the city executes on the security bond or any sums are withdrawn from the security fund, the city shall give written notice to the grantee, franchisee, or lessee:

1. Describing the act, default or failure to be remedied, or the damages, costs or expenses which the city has incurred by reason of grantee, franchisee, or lessee's act, default, or failure;

2. Providing a reasonable opportunity for grantee, franchisee, or lessee to first remedy the existing or ongoing default or failure, if applicable;

3. Providing a reasonable opportunity for grantee, franchisee, or lessee to pay any moneys due the city before the city executes the bond or withdraws the

amount thereof from the security fund, if applicable; and

4. That the grantee, franchisee, or lessee will be given an opportunity to review the act, default or failure described in the notice with the city or his or her designee.

C. Grantees, franchisees and lessees shall replenish the security bond or fund within 14 calendar days after written notice from the city that there is a deficiency in the amount of the bond or fund. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.260 Performance bond.

All performance bonds provided in accordance with this title shall comply with the minimum standards in Chapter 12.24 ACC. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.270 Coordination of construction activities.

ACC 20.10.100 notwithstanding, all grantees, franchisees and lessees, are required to cooperate with the city and with each other.

A. By November 15th of each year, grantees, franchisees and lessees shall provide the city with a schedule of their proposed construction activities which may affect the public ways in any manner.

B. Each grantee, franchisee and lessee shall meet with the city, other grantees and franchisees and users of the public ways annually or as determined by the city to schedule and coordinate construction which may affect the public ways in any manner.

C. All construction locations, activities and schedules shall be coordinated, as required by the city public works director, to minimize public inconvenience, disruption or damages.

D. Each grantee, franchisee and lessee shall be available to city staff employees of a city department having jurisdiction over their respective activities 24 hours a day, seven days a week, regarding problems or complaints resulting from the attachment, installation, operation, use, maintenance, or removal of commercial utility or telecommunications system facilities. The city must be able to contact by telephone the network control center of each grantee, franchisee and lessee. A telephone number at which an employee can be reached 24 hours a day, seven days a week regarding such problems or complaints must be provided by each grantee, franchisee and lessee before any public way agreement, franchise, or lease is effective. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.280 Assignments or transfers of public way agreements, franchises, or leases.

The assignment or transfer of any business registration, public way agreement, franchise or lease subject to this title, may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, franchisee, or lessee, by operation of law or otherwise, without the prior written consent of the city, which consent shall not be unreasonably withheld or delayed, except as expressed by ordinance and then only on such reasonable conditions as may be prescribed therein.

A. No public way agreement, franchise, or lease, subject to this title, shall be assigned or transferred before construction of such systems has been completed to the city's satisfaction without prior written consent of the city,

which consent shall not be unreasonably withheld or delayed, except as expressed by ordinance and then only on such reasonable conditions as may be prescribed therein.

B. The grantee, franchisee, or lessee and the proposed assignee or transferee of the public way agreement, franchise, or lease shall provide and certify the following information to the city not less than 90 calendar days prior to the proposed date of transfer:

1. Complete information setting forth the nature, terms and conditions of the proposed transfer or assignment relating to the public way agreement, franchise or lease;

2. All information required by a public way agreement, franchise, or lease applicant pursuant to this title with respect to the proposed transferee or assignee;

3. Any other information reasonably required by the city; and

4. A nonrefundable application fee in the amount of $75.00.

C. No transfer shall be approved unless the assignee or transferee meets the requirements contained in ACC 20.04.040(A) and (I) and can comply with the requirements of the public way agreement, franchise, or lease.

D. Unless otherwise provided in a public way agreement, franchise, or lease agreement, the grantee, franchisee, or lessee shall reimburse the city for all direct and indirect costs and expenses reasonably incurred by the city in considering a request to transfer or assign a public way

agreement, franchise, or lease. No approval shall be deemed approved until all such costs and expenses have been paid.

E. Any transfer or assignment of a public way agreement, franchise, or lease without prior written approval of the city under this section or pursuant to a public way agreement, franchise, or lease agreement shall be void and is cause for termination of the public way agreement, franchise, or lease. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.290 Transactions affecting control of public way agreements, franchises, or leases.

Any transactions which singularly or collectively result in a change of 50 percent or more of the ownership or working control of any grantee, franchisee, or lessee of the ownership or working control of a utility, cable, or telecommunications system, of the ownership or working control of affiliated entities having ownership or working control of the grantee, franchisee, or lessee or of a telecommunications system, or of control of the capacity or bandwidth of the grantee, franchisee, or lessee's utility, cable, or telecommunications system, facilities or substantial parts thereof, shall be considered an assignment or transfer requiring city approval pursuant to ACC 20.10.280. Transactions between affiliated entities are not exempt from the required city approval. A grantee, franchisee, or lessee shall promptly notify the city in writing prior to any proposed change in, or transfer of, or acquisition by any other party of control of a grantee's, franchisee's, or lessee's company. Every change, transfer, or acquisition of control of a grantee's, franchisee's, or lessee's company shall cause a review of the proposed transfer. In the event that the city council adopts a resolution or other appropriate order opposing such change, transfer or acquisition of control has been effected, the city may

terminate the public way agreement, franchise, or lease. City approval shall not be required for mortgaging purposes or if said transfer is from a grantee, franchisee, or lessee to another person or entity controlling, controlled by, or under common control with a grantee, franchisee, or lessee. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.300 Revocation or termination of public way agreements, franchises, or leases.

A public way agreement, franchise, or lease granted by the city to use or occupy public ways of the city or city property may be terminated or revoked for the following reasons:

A. Construction or operation in the city or in the public ways of the city or upon city property without a public way agreement, franchise, or lease;

B. Construction or operation at an unauthorized location;

C. Unauthorized substantial transfer of control of a grantee, franchisee, or lessee;

D. Unauthorized assignment of a public way agreement, franchise, or lease;

E. Unauthorized sale, assignment or transfer of a grantee's, franchisee's, or lessee's public way agreement, franchise, lease, assets, or a substantial interest therein;

F. Misrepresentation or lack of candor by or on behalf of a grantee, franchisee, or lessee in any application or written or oral statement upon which the city relies in making the decision to approve, review or amend any public way agreement, franchise, or lease pursuant to this title;

G. Abandonment of cable or telecommunications facilities in the public ways or upon city property;

H. Failure to relocate or remove facilities as required in this title;

I. Failure to pay taxes, compensation, fees, assessments, or costs when and as due to the city;

J. Insolvency or bankruptcy of the grantee, franchisee, or lessee;

K. Violation of any material provision of this title; and

L. Violation of the material terms of a public way agreement, franchise, or lease agreement. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.310 Notice and duty to cure.

In the event that the city believes that grounds exist for termination or revocation of a public way agreement, franchise, or lease, the grantee, franchisee, or lessee shall be given written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the grantee, franchisee, or lessee a reasonable period of time not exceeding 30 days to correct the violation or furnish evidence as to:

A. That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance; or

B. That rebuts the alleged violation or noncompliance; or

C. That it would be in the public interest to impose some penalty or sanction less than revocation. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.320 Public hearing.
In the event that a grantee, franchisee, or lessee fails to respond to the notice described in ACC 20.10.310 pursuant to the procedures set forth therein, or in the event that the alleged violation is not remedied within the prescribed period of time after notification of the alleged violation pursuant to ACC 20.10.310, the city council shall schedule a public hearing to investigate the violation. Such public hearing shall be held at the next regularly scheduled hearing of the city council which is scheduled at a time which is no less than five business days therefrom. The city shall notify the grantee, franchisee, or lessee of the time and place of such public hearing and provide the grantee, franchisee, or lessee with an opportunity to be heard. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.330 Standards for revocation or lesser sanctions.
If the city council determines that a grantee, franchisee, or lessee willfully violated or failed to comply with any of the provisions of this title or any provision of a public way agreement, franchise, or lease granted under this title, or through willful misconduct or gross negligence failed to heed or comply with any notice given the grantee, franchisee, or lessee by the city under the provisions of this title, then the grantee, franchisee, or lessee shall, at the election of the city council, forfeit all rights conferred under the public way agreement, franchise, or lease, and the public works agreement, franchise, or lease may be revoked, terminated, or annulled by the city council. The city council may elect, in lieu of revocation, termination, or annulment, and without any prejudice to any of its other legal rights and remedies, to pursue other remedies,

including obtaining an order from the superior court having jurisdiction compelling the grantee, franchisee, or lessee to comply with the provisions of this title and any public way agreement, franchise, or lease granted hereunder, and to recover reasonable and documented damages and costs incurred by the city by reason of the grantee, franchisee, or lessee's failure to comply. The city council shall utilize, but is not limited to, the following factors in analyzing the nature, circumstances, extent, and gravity of any violation(s) in making its determination under this section:

A. Whether the misconduct was egregious;

B. Whether substantial harm resulted;

C. Whether the violation was intentional;

D. Whether there is a history of prior violations of the same or other requirements;

E. Whether there is a history of overall compliance;

F. Whether the violation was voluntarily disclosed, admitted or cured. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.340 Civil penalties.

A. Any person, and the officers, directors, managing agents, or partners of any corporation, firm, partnership or other organization or business violating or failing to comply with any of the provisions of this title shall be subject to a penalty in an amount not less than $100.00 nor more than $1,000 per day for each violation from the date of each violation until compliance is achieved.

B. In addition to any penalty which may be imposed by the city council, any person violating or failing to comply with any of the provisions of this title shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to the violation.

C. The violator may show the city council as full or partial mitigation:

1. That the violation giving rise to the action was caused by the willful act, or neglect, or abuse of another; or

2. That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented by inability to obtain necessary materials or labor, inability to gain access to the subject structure, or other condition or circumstance beyond the control of the violator.

D. The penalties which may be imposed by this section shall be collected by civil action brought by the city if not paid timely after penalty assessment by the city council. The public works director or designee shall notify the finance director in writing of the name of any person subject to the penalty, and the finance director shall take appropriate action to collect the penalty. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.350 Enforcement.

Subject to applicable federal and state law, in the event the city council, after such public hearing, determines that a grantee, franchisee, or lessee is in default of any provision of a public way agreement, franchise, or lease, it may:

A. Require foreclosure on all or any part of any security provided under this title, or a specific public way agreement, franchise, or lease, if any, including without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the city reasonably determines is necessary to remedy the default;

B. Call for commencement of an action at law for monetary damages or other equitable relief;

C. After the expiration of said 30-day period to cure violation (ACC 20.10.310), the city may be directed to act to remedy the violation and charge the reasonable and documented costs and expenses of such action to the grantee, franchisee, or lessee;

D. In the case of a material breach of the public way agreement, franchise, or lease, declare the public way agreement, franchise, or lease to be terminated or revoked;

E. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages;

F. Grantees, franchisees, or lessees shall not be relieved of any obligations to comply promptly with any provision of a public way agreement, franchise, or lease by reason of any failure of the city to promptly enforce compliance;

G. In addition to other remedies provided herein, if a grantee, franchisee, or lessee is not in compliance with requirements of this title, and if a good faith dispute does not exist concerning such compliance, the city may place a

moratorium on issuance of any pending permits until compliance is achieved;

H. A grantee, franchisee, or lessee shall not be held in default or noncompliance with the provisions of a public way agreement, franchise, or lease nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control;

I. Assess civil penalties pursuant to ACC 20.10.340;

J. The city may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of the applicable provisions of this title when civil penalties are inadequate to effect compliance;

K. In addition to the penalties set forth in this section, violation of the terms of this title may also result in the revocation or termination of any public way agreement, franchise, approval, lease, or permit issued or granted hereunder, as set forth in ACC 20.10.300 through 20.10.340. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.360 Other remedies.

Nothing in this title shall be construed as limiting any judicial remedies that the city may have, at law or in equity, for enforcement of this title. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.370 Venue of any court action.

All public way agreements, franchises, and leases subject to this title shall be governed and construed by and in accordance with the laws of the state of Washington. In the

event that suit is brought by a party to a public way agreement, franchise, or lease subject to this title, the parties agree that jurisdiction of such action shall be vested exclusively in the King County Superior Court for the State of Washington, or in the United States District Court for the Western District of Washington located in Seattle, Washington. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.380 Action by the FCC.

In the event the FCC promulgates more stringent notice requirements, technical standards, consumer protection or consumer services requirements than are contained in agreements or franchises subject to this title, those more stringent requirements shall prevail. The city shall give reasonable written notice when, in their determination, that has occurred. Grantees, franchisees, and lessees shall retain and not waive any or all rights and privileges as afforded either under existing contracts or agreements or pursuant to federal law or FCC regulations to complain and/or appeal such a determination. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.390 Incorporation by reference.

The provisions of this chapter shall be incorporated by reference in any public way agreement, franchise, or lease approved hereunder. The provisions of this chapter shall be incorporated by reference in any proposal submitted and accepted by the city in the applicable public way agreement, franchise, or lease. However, in the event of any conflict between the proposal, this chapter, and the public way agreement, franchise, or lease, the public way agreement, franchise, or lease shall be the prevailing document. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.400 Notice of entry on private property.

If directed by the city, a grantee, franchisee, or lessee shall, at least 24 hours prior to entering private property or streets or public easements adjacent to or on such private property to perform new construction or reconstruction, provide a notice indicating the nature and location of the work to be performed. The notice shall be physically posted, at no expense to the city or private property owner or resident, upon the affected property by the grantee, franchisee, or lessee. A door hanger may be used to comply with the notice and posting requirements of this section. A grantee, franchisee, or lessee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices; provided, however, that nothing in this title shall permit a grantee or franchisee to unlawfully enter or construct improvements upon the property or premises of another. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.410 Safety requirements.

A grantee, franchisee, or lessee, in accordance with applicable federal, state, and local safety requirements shall, at all times, employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public and/or workers. All structures and all lines, equipment and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of a permit, public way agreement, franchise, or lease area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair. The city reserves the general right to see that the telecommunications systems of a grantee, franchisee, or

lessee are constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code or other applicable regulation is found to exist by the city, the city will, after discussions with a grantee, franchisee, or lessee, establish a reasonable time frame for a grantee, franchisee, or lessee to make necessary repairs. If the repairs are not made within the established time frame, the city may make the repairs itself or have them made and collect all reasonable costs thereof from a grantee, franchisee, or lessee. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.420 Most favored community.

In the event that a grantee, franchisee, or lessee enters into any agreement, franchise or other understanding with any other city, town or county in the state of Washington which provides terms or conditions more favorable to the city, town or county than those provided in its agreement with the city, such as, but not limited to, free or reduced fee hookups, access or service, the city shall be entitled to request at the city's option, and the grantee, franchisee, or lessee in question shall be required to execute, an amendment to its agreement which incorporates the more favorable terms and conditions at the grantee's, franchisee's, or lessee's lowest comparable rate applicable to any government body or municipality in the state of Washington. (See ACC 20.06.180(N), Best Rates). (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.430 Compliance with zoning standards.

All applications for leases, franchises, and public way agreements under this title will comply with the city zoning regulations and siting standards in ACC Title 18. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.440 Unfunded mandate.

The city intends that no federal or state requirement to promote the deregulation of utilities or telecommunications shall become an unfunded mandate requiring funding support from the city over and above its routine operations and maintenance budget to maintain the public ways. Therefore, except as expressly provided to the contrary, all costs incurred by a grantee, franchisee, or lessee in complying with the terms and conditions of any agreement subject to this title or any applicable laws, ordinances, codes, rules, regulations and/or orders or any action thereunder shall be the sole responsibility of the respective grantee, franchisee, or lessee and shall not be the responsibility of or charged to the city. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.450 Care of trees along streets.

Upon prior written approval of the city and in accordance with city ordinances, any grantee, franchisee, or lessee shall have the authority to trim trees upon and overhanging streets, public ways and places in the franchise area so as to prevent the branches of such trees from coming in physical contact with the facilities of the respective grantee, franchisee, or lessee. The grantee, franchisee, or lessee shall be responsible for debris removal from such activities. If such debris is not removed within 24 hours, the city may, at its sole discretion, remove such debris and charge the grantee, franchisee, or lessee for the cost thereof. This section does not, in any instance, grant automatic authority to clear vegetation for purposes of providing a clear path for radio signals. Any such general vegetation clearing will require a city land clearing permit. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.460 Use of utility poles and facilities of others.
Grantees and franchisees may seek to contract with the city or any appropriate board or agency thereof or with the holder or owner of any utility franchise in the city for the use, rental or lease of its or their poles and other structures and facilities for the purpose of extending, carrying or laying telecommunications facilities, electronic conductors and other facilities and appurtenances necessary or desirable in conjunction with the operation of its telecommunications system. The city agrees that any public utility owning or controlling such poles or other structures or facilities may, without amendment to its franchise, allow, and is encouraged to allow, grantees and franchisees to make such use thereof pursuant to any agreement reached between the affected parties. City-owned poles are limited to street light and traffic signal poles which generally are not intended for use by others. The city reserves the right to determine on a case-by-case basis that particular circumstances require that a certain city-owned pole is not appropriate for use. No grantee or franchisee will utilize any city-owned poles prior to approval by the city engineer. Any compensation for uses of city-owned poles will be based upon the prevailing market rates for similar uses in the region. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.470 Use of poles and facilities by city.
With respect to poles and trenches which are facilities and which are (1) wholly owned by a franchisee or grantee, and (2) within the franchise area, the city, subject to franchisee's or grantee's prior written consent, may install and maintain city-owned overhead facilities upon such poles, and conduits in open trenches, for police, fire, illumination, and other noncommercial communications purposes, subject to the following:

A. Such installation and maintenance shall be completed at the city's expense;

B. The franchisee or grantee shall have no obligation under the indemnification provisions of this franchise or public way agreement for the installation or maintenance of such city-owned facilities or conduits;

C. Nothing herein shall require the franchisee or grantee to bear any cost or expense in connection with such installation and maintenance of city-owned facilities or conduits, nor shall such city installation delay or adversely effect franchisee's or grantee's construction schedule;

D. In no case shall the city attach to or come into contact with grantee's or franchisee's equipment. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

20.10.480 Administration.

The public works director or his/her designee shall administer all public way agreements and franchises subject to this title, and the finance director or his/her designee shall administer all leases subject to this title. (Ord. 5271 § 1, 1999; Ord. 5034 § 1, 1998.)

APPENDIX F

ORDINANCE NO. 1200

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, relating to telecommunications; establishing requirements for telecommunication carriers and providers and standards for the granting and renewal of telecommunications franchises; providing for the regulation of use of public ways, providing for insurance, bonding and construction standards for telecommunications facilities located in public ways; establishing procedures for appeals of administrative decisions regarding telecommunications facilities; providing for enforcement of this ordinance; establishing requirements for antennas and personal wireless telecommunication facilities, including a purpose statement, definitions, exemptions, site selection criteria, priority of locations, priority on city property, co-location and design criteria, permit inspection requirements and landscaping requirements, non-use and abandonment provisions, third party review and remedies; and adding a new Title 20 to the Des Moines Municipal Code.

WHEREAS, pursuant to RCW 35A.47.040, RCW 80.35.040 and other lawful authority, the city of Des Moines has the authority to regulate the use of its streets and other municipal property, and

WHEREAS, the city council finds that an increasing number of telecommunication carriers and providers have requested access to and the use of public ways and public property, and

WHEREAS, RCW 35A.11.020 grants cities broad authority to regulate the use of the public rights-of way, and

WHEREAS, RCW 35A.47.040 grants cities broad authority to grant non-exclusive franchise agreements, and

WHEREAS, RCW 35A.82.020 authorizes code cities to impose business licensing requirements and excises upon business transacted within such a city to the extent permitted by the general laws, and

WHEREAS, Congress has adopted the Telecommunications Act of 1996 (hereinafter the "Act") in order to encourage the development of high-technology communications systems through increased competition among communications companies, and

WHEREAS, the Act provides for the removal of regulatory barriers, rate deregulation and relaxation of certain anti-trust provisions in an attempt to achieve this goal, and

WHEREAS, the Act is anticipated to have a significant effect on the range and type of services that telecommunications carriers will be delivering via cable and wireless technologies, and

WHEREAS, the changes proposed in this ordinance have been processed in accordance with the requirements of the State Environmental Policy Act (SEPA), a final determination of nonsignificance was issued by the responsible official, and the appropriate comment period has expired, and

WHEREAS, by motion regularly passed, the Des Moines city council scheduled a public hearing for September 11, 1997 to consider the textual code amendment contained in this ordinance, and

WHEREAS, notice of the public hearing was given to the public in accordance with law and a public hearing was held on September 11, 1997 and all persons wishing to be heard were heard, and

WHEREAS, the Act contains numerous provisions which directly affect local taxation, zoning, franchise authority and public ways management, and

WHEREAS, the Act will likely place additional demands on the use of the city's public ways and public property, and

WHEREAS, section 704 of the federal Telecommunications Act of 1996, 47 USC Sec. 332(c)(7), provides that local governments may, pursuant to their inherent zoning authority, regulate the placement, construction, and modification of personal wireless telecommunications service facilities, provided that the local governments do not unreasonably discriminate among providers of functionally equivalent services, or prohibit or have the effect of prohibiting the provision of personal wireless services, and

WHEREAS, the city council finds that personal wireless service facilities often require large structures or towers, whose height and footprint may not be compatible, as a matter of sound urban planning, with adjoining residential uses, and

WHEREAS, the city council further finds that the public interest is best served by enacting specific siting regulations which will provide for placement of personal wireless facilities in areas least likely to negatively affect residential property, and

WHEREAS, the city is in the process of and will continue to identify potential sites which will allow for the placement of personal wireless telecommunications facilities subject to the criteria enumerated herein and elsewhere in city ordinances, and

WHEREAS, the city currently has regulations which do not take into account the provisions of the Act, and

WHEREAS, the city council finds that the provisions contained in this ordinance are appropriate and necessary for the preservation of the public health, safety and welfare; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES DO ORDAIN AS FOLLOWS:

TITLE 20
Telecommunications

Chapter 20.01. - Purpose and General Provisions

Sec. 1. Adoption of Title 20, Telecommunications. The city council hereby adopts a new Title 20, Telecommunications, to the Des Moines Municipal Code.

Sec. 2. Purpose. The purpose of this chapter is to:

(1) Establish a local policy concerning telecommunications providers and services;

(2) Establish clear and nondiscriminatory local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of telecommunications providers and services;

(3) Promote competition in telecommunications;

(4) Minimize unnecessary local regulation of telecommunications providers and services;

(5) Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions and residents of the city;

(6) Permit and manage reasonable access to the public ways of the city for telecommunications purposes on a competitively neutral basis;

(7) Conserve the limited physical capacity of the public ways held in public trust by the city;

(8) Assure that the city's current and ongoing costs of granting and regulating private access to and use of the public ways are fully paid by the persons seeking such access and causing such costs;

(9) Secure fair and reasonable compensation to the city and the residents of the city, in a non-discriminatory manner, for permitting private use of the public ways;

(10) Assure that all telecommunications carriers providing facilities or services within the city comply with the ordinances, rules and regulations of the city;

(11) Assure that the city can continue to fairly and responsibly protect the public health, safety and welfare;

(12) Enable the city to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development.

Sec 3. Definitions.

(1) Use of words and phrases. As used in this ordinance, unless the context or subject matter clearly

requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

(2) "Abandonment" means: (1) to cease operation for a period of sixty (60) or more consecutive days; (2) to reduce the effective radiated power of an antenna by seventy-five percent for sixty (60) or more consecutive days; (3) to relocate an antenna at a point less than eighty (80) percent of the height of an antenna support structure; or (4) to reduce the number of transmissions from an antenna by seventy-five percent for sixty (60) or more consecutive days.

(3) "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person.

(4) "Antenna" means any exterior apparatus designed for telephonic, radio, data, Internet, or television communications through the sending and/or receiving of electromagnetic waves, and includes equipment attached to a tower or building for the purpose of providing personal wireless services, including unlicensed wireless telecommunications services, wireless telecommunications services utilizing frequencies authorized by the Federal Communications Commission for "cellular", "enhanced specialized mobile radio" and "personal communications services", telecommunications services, and its attendant base station.

(5) "Antenna height" means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure even if said highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other

appurtenances and shall be measured from the finished grade of the parcel. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

(6) "Antenna support structure" means any pole, telescoping mast, tower, tripod, or other structure which supports a device used in the transmitting or receiving of radio frequency signals.

(7) "Applicant" means any provider or any person, partnership, or company who files an application for any permit necessary to install, maintain, or remove a personal wireless service facility within the city.

(8) "Cable acts" means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, as amended by portions of The Telecommunications Act of 1996, and as hereafter amended.

(9) "Cable operator" means a telecommunications carrier providing or offering to provide "cable service" within the city as that term is defined in the cable acts.

(10) "Cable service" shall have the same meaning as defined in the cable acts.

(11) "Camouflaged" means a personal wireless service facility that is disguised, hidden, or integrated with an existing structure that is not a monopole or tower, or a personal wireless service facility that is placed within an existing or proposed structure or, new

structure, tower, or mount within trees so as to be significantly screened from view.

(12) "Cell site" or "site" means a tract or parcel of land that contains personal wireless service facilities including any antenna, support structure, accessory buildings, and parking, and may include other uses associated with and ancillary to personal wireless services.

(13) "City property" means all real property owned by the city whether in fee ownership or other interest.

(14) "City" means the city of Des Moines.

(15) "Co-location" or "collocation" means the use of a personal wireless service facility or cell site by more than one personal wireless service provider or the siting of a facility on an existing structure.

(16) "Collocation permit" means an administrative process exercised and approved by the city manager or designee to encourage collocation of facilities as provided in this ordinance.

(17) "Commercial zones" or "commercial district" means and includes each of the following zoning classifications as defined in DMMC 18.06.020: B-N, Neighborhood Business; B-C, Community Business; C-C, Community Commercial; D-C, Downtown Commercial; C-G, General Commercial; B-P, Business Park; and H-C, Highway Commercial.

(18) "Conditional use permit" or "CUP" means a process and approval as described in city of Des

Moines Ordinance No. 770 and in the Zoning Code, chapter 18.94.

(19) "COW" means "cell on wheels".

(20) "Data communication" means (1) the transmission of encoded information or (2) the transmission of data from one point to another.

(21) "Design" means the appearance of personal wireless service facilities, including such features as their materials, colors, and shape.

(22) "EIA" means the Electronics Industry Association.

(23) "Emergency" means a condition of imminent danger to the health, safety, and welfare of property or persons located within the city including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots or wars.

(24) "Equipment enclosure" means a structure, shelter, cabinet, or vault used to house and protect the electronic equipment necessary for processing wireless communication signals. Associated equipment may include air conditioning, backup power supplies and emergency generators.

(25) "Excess capacity" means the volume or capacity in any existing or future duct, conduit, manhole, handhole or other utility facility within the right-of- way that is or will be available for use for additional telecommunications facilities.

(26) "FAA" means the Federal Aviation Administration.

(27) "FCC" or "Federal Communications Commission" means the Federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

(28) "Fiber optics" means the technology of guiding and projecting light for use as a permanent communications medium.

(29) "Franchise" means the initial authorization, or renewal thereof, approved by an ordinance of the city, which authorizes the franchisee to construct, install, operate, or maintain telecommunications facilities in, under, over, or across public ways of the city and to also provide telecommunications service to persons or areas in the city.

(30) "Franchisee" means the person, firm or corporation to whom or which a franchise is granted, as defined in this section, is granted by the council under this ordinance and the lawful successor, transferee or assignee of said person, firm or corporation subject to such conditions as may be defined in this ordinance.

(31) "Governing authority" means the city council of the city of Des Moines.

(32) "Grantee" means both licensees and franchisees granted certain rights and obligations as more fully described herein.

(33) "Hearing examiner" means the duly appointed hearing examiner of the city.

(34) "Modification" means the changing of any portion of a personal wireless service facility from its description in a previously approved permit. Examples include, but are not limited to, changes in design.

(35) "Mount" means the structure or surface upon which personal wireless service facilities are mounted. There are three types of mounts: (i) Building mounted, a personal wireless service facility mount fixed to the roof or side of a building; (ii) ground mounted, a personal wireless service facility mount fixed to the ground, such as a tower; and, (iii) structure mounted, a personal wireless service facility fixed to a structure other than a building, such as light standards, utility poles, and bridges.

(36) "Operator" means the telecommunication carrier firm or corporation to whom a franchise is granted pursuant to the provisions of this ordinance.

(37) "Overhead facilities" means utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

(38) "Person" means corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, other entities and individuals.

(39) "Personal wireless service," "personal communications system," "personal wireless service facilities," and "facilities" used in this ordinance, shall be defined in the same manner as in chapter 47, United States

Code, section 332(c)(7)(C), as they may be amended now or in the future and includes facilities for the transmission and reception of radio or microwave signals used for communication, cellular phone, personal communications services, enhanced specialized mobile radio, and any other wireless services licensed by the FCC and unlicensed wireless services.

(40) "Provider" means every corporation, company, association, joint stock company, firm, partnership, limited liability company, other entity and individual which provides personal wireless service over personal wireless service facilities.

(41) "Public ways or rights-of way" includes the surface of and space above and below any real property in city in which city has a regulatory interest, or interest as a trustee for the public including, but not limited to, all public streets, highways, roads, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the control of the city, and any public or utility easements established, dedicated or devoted for public utility purposes.

(42) "Residential zone" or "residential district" means and includes each of the following zoning classifications as defined in DMMC 18.06.020: RS-15,000, 9,600, 8,400 and 7,200; RA-3,600; RM 2,400; RM-1,800; RM-900; RM-900A; RM-900B; S-E; and S-R.

(43) "Secondary use" means a use subordinate to the principle use of the property, such as commercial, residential, utilities, etc.

(44) "Security barrier" means a wall, fence, or berm that has the purpose of sealing a personal wireless service facility from unauthorized entry or trespass.

(45) "State" means the state of Washington.

(46) "Surplus space" means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the Washington Utilities and Transportation Commission, to allow its use by a telecommunications carrier for a pole attachment.

(47) "Telecommunications carrier" includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or property within the city, used or to be used for the purpose of offering telecommunications service.

(48) "Telecommunications facilities" means the plant, equipment and property within city used to transmit, receive, distribute, provide or offer telecommunications service.

(49) "Telecommunications provider" includes every person who provides telecommunications service over telecommunications facilities.

(50) "Telecommunications service" means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

(51) "Tower" means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term encompasses personal wireless service facilities including radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers or personal communications services towers, alternative tower structures, and the like.

(52) "Underground facilities" means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.

(53) "Unlicensed wireless services" means commercial mobile services that operate on public frequencies and do not need a FCC license.

(54) "Usable space" means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders and regulations of the Washington Utilities and Transportation Commission.

(55) "Utility facilities means the plant, equipment and property including, but not limited to, the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within public ways and used or to be used for the purpose of providing utility or telecommunications services.

(56) "Washington Utilities and Transportation Commission" or "WUTC" means the state administrative

agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers in the state of Washington to the extent prescribed by law.

Additional terms and phrases are likely to be relevant to telecommunications facilities and services subject to regulation by the city. When possible, the city shall turn to existing FCC regulations and/or existing federal statutes for clarification purposes.

Sec. 4. Registration and fees. Except as otherwise provided herein, all telecommunications carriers or providers engaged in the business of transmitting, supplying or furnishing of telecommunications service originating, terminating or existing within the city shall register with the city pursuant to this ordinance and pay all the fees as provided herein.

Sec. 5. License and fees. Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain or otherwise locate telecommunications facilities in public ways for the purpose of providing telecommunications service to persons and areas outside the city shall first obtain a license granting the use of such public ways from the city pursuant to this ordinance and pay all the fees as provided herein.

Sec. 6. Franchise and fees. Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain or otherwise locate telecommunications facilities in public ways and to also provide telecommunications service to persons or areas in the city, shall first obtain a franchise granting the use of such from the city pursuant to this ordinance and pay all the fees as provided herein.

Sec. 7. Cable franchise and fees. Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain or locate tele-communications facilities in public ways for the purpose of providing cable services shall first obtain a cable franchise from the city pursuant to DMMC 5.52 (Cable Communications and Distribution System Franchise Requirements) and pay all the fees as provided in such cable franchise.

Sec. 8. Application to existing franchise agreements. Except as provided in chapter 20.07, this ordinance shall have no effect on any existing franchise agreement until:

(1) The expiration of said franchise agreement; or

(2) An amendment to an unexpired franchise agreement, unless both parties agree to defer full compliance to a specific date not later than the present expiration date.

Sec. 9. Penalties.

(1) A violation or failure to comply with this ordinance is a Class I civil infraction.

(2) In addition to the city's civil enforcement powers, any person found violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this ordinance shall be guilty of a misdemeanor. Upon conviction any person violating any provision of this ordinance shall be subject to a fine of up to one thousand

dollars ($1,000) or by imprisonment for a period of up to ninety (90) days, or by both such fine and imprisonment.

(3) Any person found to have committed a willful, intentional, or bad faith violation of any provision of this ordinance shall be guilty of a gross misdemeanor, and, upon conviction, shall be subject to a fine of up to five thousand ($5,000.00) or by imprisonment for a period of up to one year, or by both such fine and imprisonment.

(4) A separate and distinct violation shall be deemed committed each day on which a violation occurs or continues.

(5) Nothing in this ordinance shall be construed as limiting any remedies that the city may have, at law or in equity, for enforcement of this ordinance.

Sec. 10. Most favored community. In the event that a grantee, franchisee, or lessee enters into any agreement, franchise or other understanding with any other city, town or county in the State of Washington under facts and circumstances that are substantially similar to those found in the city of Des Moines, and which provides terms or conditions more favorable to the city, town or county than those provided in its agreement with the city of Des Moines, such as, but not limited to, free or reduced fee hookups, access or service, the city shall be entitled to request at the city's option, and the grantee, franchisee, or lessee in question shall be required to execute, an amendment to its agreement which incorporates the more favorable terms and conditions.

Sec. 11. Further rules and regulations. The city manager or designee is authorized to establish

further rules, regulations and procedures to implement, administer and enforce this ordinance.

Chapter 20.02 - Registration

Sec. 12. Registration required. All telecommunications carriers having telecommunications facilities within the corporate limits of the city, or all telecommunications carriers or providers that offer or provide telecommunications service within the city, shall register with the city hereunder on forms provided by the city manager or designee which shall include the following:

(1) The identity and legal status of the registrant, including any affiliates.

(2) The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement.

(3) A description of registrant's existing or proposed telecommunications facilities within the city.

(4) A description of the telecommunications service that the registrant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the city.

(5) Information sufficient for the city to determine whether the registrant is subject to public way permitting or franchising under this ordinance.

(6) Information sufficient for the city to determine whether the transmission, origination or receipt of the telecommunications services provided or to be provided by the registrant constitutes an occupation or

privilege subject to any municipal tax, or permit, license or franchise fee.

(7) Copies of the applicant's registration filed with the Washington Utilities and Transportation Commission pursuant to WAC 480-121, and any tariff or price list or other authorization or related filings as may be required by the WUTC to provide telecommunications services. Alternatively, applicant shall submit a statement detailing the reasons that registration and related filings with the WUTC are not required.

(8) Information sufficient for the city to determine that the applicant has applied for and received any permit, operating license or other right or approvals required by the Federal Communications Commission to provide telecommunications services or facilities.

(9) Such other information as the city may require.

Sec. 13. Business registration fee. Each initial and subsequent annual application for a telecommunications business registration shall be accompanied by a nonrefundable application fee of $100.00 for the purpose of reimbursing the city for administrative expenses associated with processing the application. The fee shall be subject to modification by the city manager as provided in section 120 of this ordinance.

Sec. 14. Purpose of registration. The purpose of registration is to:

(1) Provide the city with accurate and current information concerning the telecommunications carriers and providers who offer or provide telecommunications

services within the city, or that own or operate telecommunication facilities within the city;

(2) Assist the city in enforcement of this ordinance;

(3) Assist the city in the collection and enforcement of any municipal taxes, franchise fees, license fees or charges that may be due the city; and

(4) Assist the city in monitoring compliance with local, state and federal laws.

Sec. 15. Exception to registration. A person which provides telecommunications services solely to itself, its affiliates or members between points in the same building, or between closely located buildings under common ownership or control, provided that such company or person does not use or occupy any public way of the city or other ways within the city is excepted from the registration requirement pursuant to this ordinance.

Chapter 20.03 - License

Sec. 16. License. A license shall be required of any telecommunications carrier who desires to occupy any public way with any telecommunications facilities for the purpose of providing telecommunications services to persons or areas outside the city.

Sec. 17. License application. Any person that desires a license hereunder shall file an application provided by the city manager or designee.

Sec. 18. Determination by the city. Within 120 days after receiving a complete application

hereunder, the city manager or designee shall make a determination on behalf of the city granting or denying the application in whole or in part. If the application is denied, the determination shall include the reasons for denial. The following standards shall apply when determining to grant or deny the application:

(1) The financial and technical ability of the applicant.

(2) The legal ability of the applicant.

(3) The capacity of the public way to accommodate the applicant's facilities.

(4) The capacity of the public way to accommodate additional utility and telecommunications facilities if the application is granted.

(5) The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the application is granted. Giving consideration to an applicant's willingness and ability to mitigate and/or repair same.

(6) The public interest in minimizing the cost and disruption of construction within the rights-of-way.

(7) The service that applicant will provide to the region.

(8) The effect, if any, on general public health, safety and welfare in the city's sole opinion if the application is granted.

(9) The availability of alternate routes or locations for the proposed facilities.

(10) Applicable federal, state and local laws, regulations, rules and policies.

(11) Such other factors as may demonstrate that the grant to use the public ways will serve the community interest.

Sec. 19. Agreement. No license granted hereunder shall be effective until the applicant and the city have executed a written agreement setting forth the particular items and provisions under which the license to occupy and use public ways will be granted and said agreement is properly recorded pursuant to Washington law. All licenses granted pursuant to this ordinance shall contain substantially similar terms which, taken as a whole and considering relevant characteristics of applicants, do not provide more or less favorable terms and conditions than those required of other licensees or public way permit holders.

Sec. 20. Nonexclusive grant. No license granted hereunder shall confer any exclusive right, privilege or license to occupy or use the public way for delivery of telecommunications services or any other purposes.

Sec. 21. Rights granted.

(1) No license granted hereunder shall convey any right, claim or interest in public ways but shall be deemed a license only to use and occupy the public way for the limited purposes and term stated in the grant.

(2) No license granted hereunder shall authorize or excuse a licensee from securing such further easements, leases, permits or other approvals as may be required to lawfully occupy and use public ways .

(3) No license granted hereunder shall be construed as any warranty of title.

Sec. 22. Term of grant. Unless otherwise specified in a license agreement, a license granted hereunder shall be in effect for a term of not more than five (5) years.

Sec. 23. License route. A license granted hereunder shall be limited to a grant of specific public ways and defined portions thereof, as may be indicated in the license agreement.

Sec. 24. Construction permits. All licensees are required to obtain construction permits, such as those required by Title 14 DMMC, and pay all fees as required by the city, provided, however, that nothing in this ordinance shall prohibit the city and a licensee from agreeing to alternative plan review, permit and construction procedures in a license agreement, provided such alternative procedures provide substantially equivalent safeguards for reasonable construction practices.

Sec. 25. Compensation to city. Each license granted hereunder is subject to the city's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for use of property pursuant, including but not limited to fair and proportionate compensation for any increased deterioration or decrease in the useful life of any city public way or property used pursuant to the license and reimbursement

for the city's costs in connection with reviewing, inspecting and supervising the use and occupancy of the telecommunication structure on behalf of the public and existing or future users, provided nothing in this ordinance shall prohibit the city and a licensee from agreeing upon the compensation to be paid.

All grantees shall, within thirty (30) days after written demand, reimburse the city for all direct and indirect costs and expenses incurred by the city in connection with any modification, amendment, renewal or transfer of the authorization or any authorization agreement. In addition, all grantees shall, within thirty (30) days after written demand, reimburse the city for any and all costs the city reasonably incurs in response to any emergency involving the grantee's telecommunications facilities. All grantees shall, within thirty (30) days after written demand, reimburse this city for the grantee's proportionate share of all actual, identified expenses incurred by the city in planning, constructing, installing, repairing or altering any city facility as a result of the construction or the presence in the public ways of the grantee's telecommunications facilities.

Sec. 26. Service to city users. A licensee may be permitted to offer or provide telecommunications services to persons or areas within the city upon receiving a franchise pursuant to this ordinance.

Sec. 27. Amendment of grant.

(1) A new license application and grant shall be required of any telecommunications carrier that desires to extend or locate its telecommunications facilities in public ways which are not included in a license previously granted hereunder.

(2) If ordered by the city to locate or relocate its telecommunications facilities in public ways not included in a previously granted license, the city shall grant a license amendment without further application.

(3) A new license application and grant shall be required of any telecommunications provider that desires to add to or modify the telecommunications services provided pursuant to a license previously granted.

Sec. 28. Renewal applications. A licensee that desires to renew its license hereunder shall, not more than 180 days nor less than 90 days before expiration of the current license, file an application with the city for renewal of its license which shall include the following information:

(1) The applicable information required pursuant to the license application.

(2) Any other information required by city.

Sec. 29. Renewal determinations. Within ninety (90) days after receiving a complete application hereunder, the city manager or designee shall make a determination on behalf of the city granting or denying the renewal application in whole or in part. If the renewal application is denied, the determination shall include the reasons for non-renewal. The standards enumerated in section 33 shall apply when determining to grant or deny the application, plus a determination of the applicant's compliance with the requirements of this ordinance and the license agreement.

Sec. 30. Obligation to cure as a condition of renewal. No license shall be renewed until any ongoing

violations or defaults in the licensee's performance of the license agreement, of the requirements of this ordinance, and all applicable laws, statutes, codes, ordinances, rules and regulations have been cured, or a plan detailing the corrective action to be taken by the licensee has been approved by the city manager or designee.

Chapter 20.04 - Franchise

Sec. 31. Franchise. A franchise shall be required of any telecommunications carrier who desires to occupy public ways and to provide Telecommunications services to any person or area in the city.

Sec. 32. Franchise application. Any person that desires a franchise hereunder shall file an application provided by the city manager or designee.

Sec. 33. Determination by the city. Within 120 days after receiving a complete application hereunder, the city manager shall make a recommendation to the city council to grant or deny the application in whole or in part. The city council will consider the franchise following receipt of the city manager's recommendation. If the application is denied, the determination shall include the reasons for denial. The standards enumerated in section 18 of this ordinance shall apply when determining to grant or deny the application.

Sec. 34. Agreement. No franchise shall be granted hereunder unless the applicant and the city have executed a written agreement setting forth the particular terms and provisions under which the franchise to occupy and use public ways will be granted and said agreement has been recorded pursuant to Washington law. All franchises granted pursuant to this ordinance shall contain

substantially similar terms and conditions which, taken as a whole and considering relevant characteristics of the applicants, do not provide more or less favorable terms and conditions than those required of other franchisees.

Sec. 35. Nonexclusive grant. No franchise granted hereunder shall confer any exclusive right, privilege or franchise to occupy or use the public ways for delivery of Telecommunications services or any other purposes.

Sec. 36. Rights granted.

(1) No franchise granted hereunder shall convey any right, title or interest in the public ways but shall be deemed a franchise only to use and occupy the public ways for the limited purposes and term stated in the grant.

(2) No franchise granted hereunder shall authorize or excuse a franchisee from securing such further easements, leases, permits or other approvals as may be required by private parties or other governmental entities to lawfully occupy and use public ways.

(3) No franchise granted hereunder shall be construed as any warranty of title.

Sec. 37. Term of grant. Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be valid for a term of not more than ten (10) years.

Sec. 38. Franchise territory. A telecommunications franchise granted hereunder shall be limited to the specific geographic area of the city to be

served by the franchisee, and the specific public ways and portions thereof, as may be identified in the franchise agreement.

Sec. 39. Construction permits. All franchisees are required to obtain permits and pay all fees for telecommunications facilities as required by Title 14 DMMC, provided, however, that nothing in this ordinance shall prohibit the city and a franchisee from agreeing to alternative plan review, permit and construction procedures in a franchise agreement, provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices.

Sec. 40. Compensation to city. Each franchise granted hereunder is subject to the city's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for use of property pursuant to a franchise, provided nothing in this ordinance shall prohibit the city and a franchisee from agreeing upon the compensation to be paid.

Sec. 41. Nondiscrimination. A franchisee shall make its telecommunications services available to any customer within its franchise area who shall request such service, without discrimination as to the terms, conditions, rates or charges for franchisee's services, provided, however, that nothing in this ordinance shall prohibit a franchisee from making any reasonable and lawful classifications among differently situated customers, including classifications based on credit or payment history.

Sec. 42. Service to the city. A franchisee shall make its telecommunications services available to the city at its most favorable rate for similarly situated users,

provided, however, the city may negotiate more favorable rates or free service in lieu of other obligations of franchisee.

Sec. 43. Amendment of grant.

(1) A new franchise application and grant shall be required of any telecommunications carrier that desires to extend its franchise territory or to locate its telecommunications facilities in public ways which are not included in a franchise previously granted hereunder.

(2) If ordered by the city to locate or relocate its telecommunications facilities in public ways not included in a previously granted franchise, the city shall grant a franchise amendment without further application.

(3) A franchise application and grant shall be required of any telecommunications provider that desires to add to or modify the telecommunications services provided pursuant to a franchise previously granted.

Sec. 44. Renewal applications. A franchisee that desires to renew its franchise hereunder shall, not more than one hundred eighty (180) days nor less than ninety (90) days before expiration of the current franchise, file an application with the city for renewal of its franchise which shall include the following information:

(1) The applicable information required pursuant to the franchise application.

(2) Any other information required by the city.

Sec. 45. Renewal determinations. Within sixty (60) days after receiving a complete application hereunder, the city manager or designee shall make a recommendation to the city council to grant or deny the renewal application in whole or in part. If the renewal application is denied by the city council, the determination shall include the reasons for non-renewal. The standards enumerated in section 18 of this ordinance shall apply when determining to grant or deny the application, plus a determination of the applicant's compliance with the requirements of this ordinance and the franchise agreement.

Sec. 46. Obligation to cure as a condition of renewal. No franchise shall be renewed until any ongoing violations or defaults in the franchisee's obligations under the franchise agreement, of the requirements of this ordinance, and all applicable laws, statutes, codes, ordinances, rules and regulations have been cured, or a plan detailing the corrective action to be taken by the franchisee has been approved by the city.

Chapter 20.05 - Cable Franchise

[Reserved for possible renumbering of existing DMMC 5.52 re: Cable Franchises]

Chapter 20.06 - Conditions of Grant of License, Franchise or Cable Franchise

Sec. 47. General duties.

(1) All grantees, before commencing any construction in public ways shall comply with all requirements of the Des Moines Municipal Code or other ordinances of the city.

(2) All grantees shall provide written confirmation sufficient for customary land survey and land title insurance purposes concerning the location of its facilities in public ways and disclaiming any interest in public ways where it has no license or franchise to construct or operate its facilities.

Sec. 48. Interference with the public ways. No grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public ways by the city, by the general public or other persons authorized to use or be present in or upon the public ways. All such facilities shall be moved by and at the expense of the grantee, temporarily or permanently, as determined by the city.

Sec. 49. Damage to property. No grantee or any person acting on a grantee's behalf shall take any action or permit any action to be done which may impair or damage any public ways, or other property located in, on or adjacent thereto except in accordance with section 58.

Sec. 50. Notice of work. Unless otherwise provided in a license or franchise agreement, no grantee, or any person acting on the grantee's behalf, shall commence any non-emergency work involving undergrounding, excavation or obstructing in or about the public ways without five (5) working days advance written notice to the city. Any private property owner whose property will be affected by a grantee's work shall be afforded the same notice.

Sec. 51. Repair and emergency work. In the event of an unexpected repair or emergency, a grantee may commence such repair and emergency response work

as required under the circumstances, provided the grantee shall notify the city manager as promptly as possible, before such repair or emergency work or as soon thereafter as possible if advance notice is not practicable.

Sec. 52. Maintenance of facilities. Each grantee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

Sec. 53. Relocation or removal of facilities. Within thirty (30) days following written notice from the city, a grantee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public ways whenever the city manager or designee shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

(1) The construction, repair, maintenance or installation of any city or other public improvement in or upon the public ways.

(2) The operations of the city or other governmental entity in or upon the public ways.

(3) The vacation of a public street or the release of a utility easement.

Sec. 54. Removal of unauthorized facilities. Within thirty (30) days following written notice from the city, any grantee, telecommunications carrier, or other person that owns, controls or maintains any unauthorized telecommunications system, facility or related appurtenances within the public ways shall, at its own expense, remove such facilities or appurtenances from the

public ways. If such grantee fails to remove such facilities or appurtenances, the city may cause the removal and charge the grantee for the costs incurred. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

(1) Upon expiration or termination of the grantee's license or franchise.

(2) Upon abandonment of a facility within the public ways.

(3) If the system or facility was constructed or installed without the prior grant of a license or franchise.

(4) If the system or facility was constructed or installed without the prior issuance of a required construction permit.

(5) If the system or facility was constructed or installed at a location not permitted by the grantee's license or franchise. Provided, however, that the city may, in its sole discretion, allow a grantee, franchisee, or other such persons who may own, control, or maintain cable or telecommunications facilities within the public ways of the city to abandon such facilities in place. No facilities of any type may be abandoned in place without the express written consent of the city. Any plan for abandonment or removal of a grantee or franchisee's facilities must be first approved by the public works director, and all necessary permits must be obtained prior to such work. Upon permanent abandonment of the property of such persons in place, the property shall become that of the city, and such persons shall submit to the city an instrument in writing, to be approved by the city attorney, transferring to the city the ownership of such property. The provisions of this section

shall survive the expiration, revocation, or termination of an authorization or franchise granted under this ordinance.

(6) Any such other reasonable circumstances affecting public health, safety and welfare deemed necessary by the city manager or designee.

Sec. 55. Failure to relocate. If a grantee is required to relocate, change or alter the telecommunications facilities hereunder and fails to do so, the city may cause such to occur and charge the grantee for the costs incurred.

Sec. 56. Emergency removal or relocation of facilities. The city retains the right and privilege to cut or move any telecommunications facilities located within the public ways as the city may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The city shall not be liable to any cable operator, telecommunications carrier or provider, or any other party for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the city's actions under this section.

Sec. 57. Damage to grantee's facilities. Unless directly and proximately caused by the willful, intentional or malicious acts of the city, the city shall not be liable for any damage to or loss of any telecommunications facility within the public ways as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the public ways by or on behalf of the city.

Sec. 58. Restoration of public ways. Restoration shall comply with the following:

(1) When a grantee, or any person acting on its behalf, does any work in or affecting any public way, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to the same condition which existed before the work was undertaken. As used in this section, "promptly" shall mean as required by the city's public works director in the reasonable exercise of the director's discretion.

(2) If weather or other conditions do not permit the complete restoration required hereunder, the grantee shall temporarily restore the affected ways or property. Such temporary restoration shall be at the grantee's sole expense and the grantee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(3) A grantee or other person acting on its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such public way.

(4) The public works director shall be responsible for inspection and final approval of the condition of the public ways following any construction and restoration activities therein. Further, the provisions of this section shall survive the expiration, revocation, or termination of an authorization, franchise, lease, or other agreement granted pursuant to this ordinance.

Sec. 59. Facilities maps. Each grantee shall provide the city with an accurate as-built map or

maps certifying the location of all telecommunications facilities within public ways. Each grantee shall provide updated as-built maps annually or upon request of the city.

Sec. 60. Duty to provide information. Within ten (10) days of a written request from the city manager or designee, each grantee shall furnish the city manager or designee with information sufficient to demonstrate:

(1) That grantee has complied with all requirements of this ordinance.

(2) That all taxes and fees due the city in connection with the telecommunications services and facilities provided by the grantee have been properly collected and paid by the grantee.

(3) That all books, records, maps and other documents maintained by the grantee with respect to its facilities within the public ways shall be made available for inspection by the city manager or designee at reasonable times and intervals.

Sec. 61. Leased capacity. Subject to the provisions of section 69 of this ordinance, a grantee shall have the right to offer or provide capacity or bandwidth to another telecommunications provider, with prior city approval, provided that:

(1) Grantee shall furnish the city in advance with a copy of any such proposed lease or agreement.

(2) The proposed lessee or person shall comply with all of the requirements of this ordinance.

Sec. 62. Grantee insurance. Unless otherwise provided by franchise or license, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring both the grantee and the city, and its elected and appointed officers, officials, agents, representatives and employees as additional insureds:

(1) Comprehensive general liability insurance with limits not less than:

(a) Five Million Dollars ($5,000,000) for bodily injury or death to each person;

(b) Five Million Dollars ($5,000,000) for property damage resulting from any one accident; and

(c) Five Million Dollars ($5,000,000) for all other types of liability.

(2) Automobile liability for owned, non-owned and hired vehicles with a limit of Three Million Dollars ($3,000,000) for each person and Three Million Dollars ($3,000,000) for each accident.

(3) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars ($1,000,000).

(4) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than Three Million Dollars ($3,000,000).

(5) The liability insurance policies required by this section shall be maintained at all times by the

grantee. Each such insurance policy shall contain the following endorsement:

> "It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until sixty (60) days after receipt by the city, by registered mail, of a written notice addressed to the city manager of such intent to cancel or not to renew."

(6) Within thirty (30) days after receipt by the city of said notice, and in no event later than fifteen (15) days prior to said cancellation, the grantee shall obtain and furnish to the city replacement insurance policies meeting the requirements of this ordinance.

Sec. 63. General indemnification. In addition to and distinct from the insurance requirements of this ordinance, each grantee hereby agrees to defend, indemnify and hold the city and its officers, officials, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorneys' fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the acts, omissions, failure to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its tele-communications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this ordinance or by a grant agreement made or entered into pursuant to this ordinance.

Sec. 64. Performance and financial guarantees. Before a license or franchise granted pursuant to this ordinance is effective, and as necessary thereafter, the grantee shall provide and deposit such monies, bonds, letters of credit or other instruments in form and substance acceptable to the city as may be required by this ordinance, or by an applicable license or franchise agreement or other applicable code, ordinance or rules and regulations of the city.

Sec. 65. Security fund. Each grantee shall establish a permanent security fund with the city by depositing the amount of up to $50,000 with the city in cash, an unconditional letter of credit, or other instrument acceptable to the city, which fund shall be maintained at the sole expense of grantee so long as any of grantee's telecommunications facilities are located within the public ways. This security fund shall be separate and distinct from any other bond or deposit required.

(1) The fund shall serve as security for the full and complete performance of grantee's obligations under this ordinance, including any costs, expenses, damages or loss the city pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations or permits of the city.

(2) Before any sums are withdrawn from the security fund, the city manager or designee shall give written notice to the grantee:

(a) Describing the act, default or failure to be remedied, or the damages, cost or expenses which the city has incurred by reason of the grantee's act or default;

(b) Providing a reasonable opportunity for the grantee to first remedy the existing or ongoing default or failure, if applicable;

(c) Providing a reasonable opportunity for the grantee to pay any monies due the city before the city withdraws the amount thereof from the security fund, if applicable;

(d) That the grantee will be given an opportunity to review the act, default or failure described in the notice with the city manager or designee.

(3) Grantee shall replenish the security fund within fourteen (14) days after written notice from the city manager or designee that there is a deficiency in the amount of the fund.

Sec. 66. Construction and completion bond. Unless otherwise provided in a license or franchise agreement, a bond written by a surety acceptable to the city equal to at least 100% of the estimated cost of constructing the grantee's telecommunications facilities within the public ways shall be deposited before a construction permit is issued.

(1) The construction bond shall remain in force until sixty (60) days after substantial completion of the work, as determined by the city manager or designee, including restoration of public ways and other property affected by the construction.

(2) The construction bond shall guarantee, to the satisfaction of the city:

(a) Timely completion of construction;

(b) Construction in compliance with applicable plans, permits, technical codes and standards;

(c) Proper location of the facilities as specified by the city;

(d) Restoration of the public ways and other property affected by the construction;

(e) The submission of "as-built" drawings after completion of the work as required by this ordinance;

(f) Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

Sec. 67. Acts at grantee's expense. Any act that a grantee is or may be required to perform under this ordinance, a license, franchise, or cable franchise or applicable law shall be performed at the grantee's expense.

Sec. 68. Coordination of construction activities. All grantees are required to cooperate with the city and with each other as follows:

(1) By February 1 of each year, grantee shall provide the city manager or designee with a non-binding schedule of their proposed construction activities which may affect the public ways for that year. Grantees shall promptly file modified schedules with the city as their construction plans change.

(2) Each grantee shall meet with the city, other grantees and users of the public ways annually or as

determined by the city to schedule and coordinate construction.

(3) All construction locations, activities and schedules shall be coordinated, as ordered by the city manager or designee, to minimize public inconvenience, disruption or damages.

Sec. 69. Assignments or transfers of grant. Ownership or control of a telecommunications system, license or franchise or any part of transmission capacity may not directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, nor may there be a transfer of working control (which includes not only actual control, but also the ability to affect or influence decisions) without the prior written consent of the city, which consent shall not be unreasonably withheld or delayed, as expressed by ordinance and then on such conditions as may be prescribed therein and:

(1) No grant shall be assigned or transferred in any manner within twelve (12) months after the initial grant of the license or franchise unless otherwise provided by law.

(2) Absent extraordinary and unforeseeable circumstances, no grant, system or integral part of a system shall be assigned or transferred before construction of the telecommunications system has been completed.

(3) The grantee and the proposed assignee or transferee of the grant or system shall provide and certify the following information to the city manager or designee:

(a) Complete information setting forth the nature, terms and condition of the proposed transfer or assignment;

(b) All information required of a license or franchise applicant pursuant to this ordinance with respect to the proposed transferee or assignee;

(c) All information required by federal, state and local law or regulation [i.e., FCC 394's];

(d) Any other information reasonably required by the city manager or designee.

(4) No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other qualifications in city's sole discretion to own, hold and operate the telecommunications system pursuant to this ordinance.

(5) The grantee shall reimburse the city for all direct and indirect fees, costs and expenses incurred by the city in considering a request to transfer ownership in or assign a license or franchise.

(6) Any transfer of ownership in or assignment of a grant, system or integral part of a system without prior approval of the city under this chapter shall be void and is cause for revocation of the grant.

(7) Upon receipt of all information required herein, and any other information required by the city, the city shall have one hundred and twenty (120) days to review and approve or deny the requested assignment or transfer, unless such period is extended by agreement of the city and grantee.

Sec. 70. Transactions affecting control of grant. Any transaction which results in any change of the ownership or in any manner the working control of the grantee, of the ownership or working control of a license or franchise, of the ownership or working control of affiliated entities having ownership or working control of the grantee or of a telecommunications system, or of control of the capacity or bandwidth or any part of the transmission capacity of the grantee's telecommunications system, Facilities or any parts thereof, all defined as 5% or more ownership or control, shall be considered an assignment or transfer requiring city approval hereunder. Transactions between affiliated entities are not exempt from city approval.

Sec. 71. Revocation or termination of grant. A license or franchise granted by the city to use or occupy public ways may be revoked for any one or more of the following reasons:

(1) Construction or operation at an unauthorized location.

(2) Unauthorized transfer of control of the grantee.

(3) Unauthorized assignment of a license or franchise.

(4) Unauthorized sale, assignment or transfer of the grantee's franchise or license assets or an interest therein.

(5) Misrepresentation or lack of candor by or on behalf of a grantee in any application to the city.

(6) Abandonment of telecommunications facilities in public ways.

(7) Failure to relocate or remove facilities as required in this ordinance.

(8) Failure to pay taxes, compensation, fees or costs when and as due the city.

(9) Insolvency or bankruptcy of the grantee.

(10) Violation of a material provision of this ordinance.

(11) Violation of a material term of a license or franchise.

Sec. 72. Notice and duty to cure. In the event that the city manager or designee believes that grounds exist for revocation of a license or franchise, the grantee shall be given written notice of the apparent violation or noncompliance, be provided a short and concise statement of the nature and general facts of the violation or noncompliance, and be given a reasonable period of time not exceeding thirty (30) days to furnish evidence:

(1) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance.

(2) That rebuts the alleged violation or noncompliance.

(3) That it would be in the public interest to impose some monetary damages, penalty or sanction less than revocation.

Sec. 73. Hearing. In the event that a grantee fails to provide evidence reasonably satisfactory to the city manager or designee as provided hereunder, the city manager or designee shall refer the apparent violation or noncompliance to the city's hearing examiner. The city shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.

Sec. 74. Standards for revocation or lesser sanctions. If persuaded that the grantee has violated or failed to comply with a material provision of this ordinance or of a franchise or license or applicable codes, ordinance, statutes, or rules and regulations, the hearing examiner shall determine whether to revoke the license or franchise, and issue a written decision relating thereto, or to establish some monetary damages, penalty, lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

(1) Whether the misconduct was egregious.

(2) Whether substantial harm resulted.

(3) Whether the violation was intentional.

(4) Whether there is a history of prior violations of the same or other requirements.

(5) Whether there is a history of overall compliance.

(6) Whether the violation was voluntarily disclosed, admitted or cured.

Sec. 75. Ownership and removal of improvements. In the event that the city requires removal of such improvements, such removal shall be accomplished at the sole expense of the grantee and completed within 30 days after receiving notice from the city requiring removal of the improvements. In the event that telecommunications facilities or other equipment are left upon city property after expiration or termination of the lease, they shall become the property of the city if not removed by the grantee upon 30 days written notice from the city. No grant shall be issued under this ordinance unless it contains a provision which states that all buildings, landscaping, and all other improvements, except telecommunications equipment, shall become the property of the city upon expiration or termination of the grant.

Sec. 76. Incorporation by reference. The provisions of this ordinance shall be incorporated by reference in any authorization, grant, franchise, or license issued hereunder. The provisions of any proposal submitted and accepted by the city shall be incorporated by reference in the applicable authorization, grant, franchise, or license. However, in the event of any conflict between the proposal, this ordinance, and the authorization, grant, franchise, or license, the authorization, grant, franchise, or license shall be the prevailing document.

Chapter 20.07 - Antennas and Wireless Telecommunication Facilities

Sec. 77. Purpose.

(1) These standards set forth in this section are designed to protect the public health, safety, and welfare, to protect property values and minimize visual impact while furthering the development of enhanced telecommunication services in the city and these standards were designed to comply with the Telecommunications Act of 1996. The provisions of this ordinance are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting personal wireless services. This ordinance shall not be applied in such a manner as to unreasonably discriminate between providers of functionally equivalent personal wireless services.

(2) To the extent that any provision of this ordinance is inconsistent or conflicts with any other city ordinance this ordinance shall control. Otherwise, this ordinance shall be construed consistently with the other provisions and regulations of the city.

(3) In reviewing any application to provide personal wireless service or to install personal wireless service facilities, the city shall act within a reasonable period of time, taking into account the nature and scope of the application. Any decision to deny an application shall be in writing, supported by substantial evidence contained in a written record. The city shall approve, approve with condition, or deny the application in accordance with the time frames and exceptions set forth in this ordinance, Ordinance No. 1174 and in accordance with other applicable ordinances.

Sec. 78. Exemptions. The following are exempt from the provisions of this ordinance and shall be permitted in all zones:

(1) Industrial processing equipment and scientific or medical equipment using frequencies regulated by the FCC.

(2) Antennas and related equipment no more than three feet in height that are being stored, shipped, or displayed for sale.

(3) Radar systems for military and civilian communication and navigation.

(4) Wireless radio utilized for temporary emergency communications in the event of a disaster.

(5) Licensed amateur (ham) radio stations.

(6) Satellite dish antennas less than two meters in diameter, including direct to home satellite services, when used as a secondary use of the property.

(7) Routine maintenance or repair of a personal wireless service facility and related equipment, (excluding structural work or changes in height or dimensions of antennas, towers, or buildings) provided that compliance with the standards of this ordinance are maintained

(8) Subject to compliance with all other applicable standards of this ordinance, a building permit application need not be filed for emergency repair or maintenance of a personal wireless service facility until

thirty (30) days after the completion of such emergency activity.

(9) A cell on wheels or other temporary personal wireless telecommunications facility shall be permitted at a time and manner as determined by the city.

Sec. 79. Recognition of industry site selection criteria. In establishing a new site, the industry requires a location that is technically compatible with the established network. A general area is to be identified based upon engineering constraints and the desired area of service. Specific locations within that general area will be evaluated using the following criteria which are not listed in order of priority:

(1) Topography as it relates to line of sight transmissions for optimum efficiency in telephone service.

(2) Availability of road access.

(3) Availability of electric power.

(4) Availability of land based telephone lines or microwave link capability.

(5) Lands leasable at fair market value, and landlords who want facilities to be located on their properties consistent with zoning regulations.

(6) Screening potential of existing vegetation, structures and topographic features.

(7) Zoning that will allow low power mobile radio service facilities.

(8) Compatibility with adjacent land uses.

(9) The least number of sites to cover the desired area.

(10) The greatest amount of coverage, consistent with physical requirements.

(11) Opportunities to mitigate possible visual impact.

(12) Availability of suitable existing structures for antenna mounting.

Sec. 80. Site selection criteria.

(1) Any applicant proposing to construct an antenna support structure, or mount an antenna on an existing structure, shall demonstrate by engineering evidence that the antenna must be located at the site to satisfy its function in the applicant's local grid system. Further, the applicant must demonstrate by engineering evidence that the height requested is the minimum height necessary to fulfill the site's function within the grid system.

(2) Applications for necessary permits will only be processed when the applicant demonstrates either that it is an FCC-licensed telecommunications provider or that it has agreements with an FCC-licensed telecommunications provider for use or lease of the support structure.

(3) Low power mobile radio service facilities shall be located and designed to minimize and mitigate any significant adverse impact on residential property values.

Facilities shall be placed in locations where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening.

(4) In all zones, location and design of facilities shall consider the impact of the facility on the surrounding neighborhood and the visual impact within the zone district. In all zones, towers shall be significantly screened or designed according to standards to be established by the community development director.

Sec. 81. Priority of locations. The order of priorities for locating new personal wireless service facilities shall be as follows:

(1) Place antennas and towers on city property if practical.

(2) Place antennas on appropriate public ways and existing structures, such as buildings, towers, water towers and smokestacks.

(3) Place antennas and towers in districts zoned Commercial.

(4) Place antennas and towers on other non-residential property.

(5) Place antennas on multi-family residential structures exceeding thirty feet (30') in height.

(6) Place antennas and towers in Residential zones a) only if appropriate locations are not available in non-residential zones; or b) when co-location on an existing structure can be accomplished in a manner consistent with

the design and aesthetic considerations provided under this ordinance.

Sec. 82. Conditional use permit required for antennas and personal wireless facilities in a residential zone.

(1) Except for items exempt from the provisions of this ordinance as provided in section 78, a conditional use permit is required for all antennas, towers, and personal wireless facilities located in a residential zone. Any terms and conditions imposed on such use shall contain substantially similar terms and conditions which, taken as a whole and considering relevant characteristics of the facility and situation at hand, do not provide more or less favorable terms and conditions than those required of licensees or franchisees under this ordinance.

(2) An applicant that wishes to locate a new antenna support structure in a residential zone shall demonstrate that a diligent effort has been made to locate the proposed communications facilities on a government facility, a private institutional structure, or other appropriate existing structures within a non-residential zone, and that due to valid considerations including physical constraints, and economic or technological feasibility, no appropriate location is available.

(3) Applicants are required to demonstrate: (a) that they have contacted the owners of structures in excess of thirty feet (30′) within a one-quarter (1/4) mile radius of the site proposed and which from a location standpoint could provide part of a network for transmission of signals, and (b) have asked for permission to install the antenna on those structures at fair market value.

(4) The information submitted by the applicant shall include: (a) a map of the area to be served by the tower or antenna, (b) its relationship to other cell sites in the applicant's network, and (c) an evaluation of existing buildings taller than thirty feet (30′), within one-quarter (1/4) mile of the proposed tower or antenna which from a location standpoint could provide part of a network to provide transmission of signals.

Sec. 83. Siting priority on public property. Where public property is sought to be utilized by an applicant, priority for the use of city-owned land for wireless antennas and towers will be given to the following entities in descending order:

(1) City of Des Moines;

(2) Public safety agencies, including law enforcement, fire and ambulance services, which are not part of the city of Des Moines and private entities with a public safety agreement with the city of Des Moines;

(3) Other governmental agencies, for uses which are not related to public safety; and

(4) Entities providing licensed commercial wireless telecommunication services including cellular, personal communication services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), data, Internet, paging, and similar services that are marketed to the general public.

(a) Minimum requirements. The placement of personal wireless service facilities on city-

owned property must comply with the following requirements:

(i) The facilities will not interfere with the purpose for which the city-owned property is intended;

(ii) Probable, significant adverse impacts on surrounding private property can be appropriately mitigated;

(iii)The applicant is willing to obtain adequate liability insurance and commit to a lease agreement which includes equitable compensation for the use of public land and other necessary provisions and safeguards. The city shall establish fees after considering comparable rates in other cities, potential expenses, risks to the city, and other appropriate factors;

(iv)The applicant will submit a letter of credit, performance bond, or other security acceptable to the city to cover the costs of removing the facilities;

(v) The antennas or tower will not interfere with other users who have a higher priority as discussed in section 83;

(vi)The lease shall provide that, the applicant must agree that in the case of a declared emergency or documented threat to public health, safety or welfare and following reasonable notice, the city may require the applicant to remove the facilities at the applicant's expense;

(vii) The applicant must reimburse the city for any related costs which the city incurs because of the presence of the applicant's facilities;

(viii) The applicant must obtain all necessary land use approvals; and

(ix) The applicant must cooperate with the city's objective to encourage co-locations and thus limit the number of cell sites requested, or camouflage the site.

(b) Special requirements for parks.

The use of city-owned parks for personal wireless service facilities brings with it special concerns due to the unique nature of these sites. The placement of personal wireless service facilities in a park will be allowed only when the following additional requirements are met:

(i) The city manager or designee has reviewed and made a recommendation regarding proposed personal wireless service facilities to be located in the park and this recommendation must be forwarded to the city council for consideration;

(ii) In no case shall personal wireless service facilities be allowed in designated critical areas unless they are co-located on existing facilities.

(iii) Before personal wireless service facilities may be located in public parks, consideration shall be given to visual impacts and disruption of normal public use;

(iv) Personal wireless service facilities may be located in public parks that are adjacent to an existing commercial or industrial zone;

(v) Personal wireless service facilities may be located in park maintenance facilities.

(vi) Personal wireless facilities may only be located in public parks if the applicant presents evidence sufficient to satisfy the city manager that such facilities will be appropriately designed, sited, and constructed to protect the health, safety and welfare of park users.

(c) Required submittals. Application for conditional use permits, building permits, and other related requests may include any combination of site plans, surveys, maps, technical reports, or written narratives necessary to convey the following information in addition to the requirements of other applicable ordinances:

(i) Photosimulations of the proposed facility from affected residential properties and public ways at varying distances;

(ii) A site elevation and landscaping plan indicating the specific placement of the facility on the site, the location of existing structures, trees, and other significant site features, the type and location of plant materials used to screen the facility, and the proposed color(s) of the facility;

(iii)A signed statement indicating that (i) the applicant and landowner agree they will diligently negotiate in good faith to facilitate co-location of additional personal wireless service facilities by other

providers on the applicant's structure or within the same site location and (ii) the applicant and/or landlord agree to remove the facility within sixty (60) days after abandonment;

(iv)Copies of any environmental documents required by any federal agency. These shall include the environmental assessment required by FCC Para. 1.1307, or, in the event that an FCC environmental assessment is not required, a statement that describes the specific factors that obviate the requirement for an environmental assessment;

(v) A site plan clearly indicating the location, type and height of the proposed tower and antenna, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower, and any other proposed structures;

(vi)A current map and aerial showing the location of the proposed tower, a map showing the locations and service areas of other personal wireless service facilities operated by the applicant and those proposed by the applicant that are close enough to impact service within the city;

(vii) Legal description of the parcel, if applicable;

(viii) The approximate distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties;

(ix) A landscape plan showing specific landscape materials;

(x) Method of fencing, and finished color and, if applicable, the method of camouflage and illumination;

(xi) A letter signed by the applicant stating the tower will comply with all FAA regulations and EIA Standards and all other applicable federal, state and local laws and regulations;

(xii) A statement by the applicant as to whether construction of the tower will accommodate co-location of additional antennas for future users;

(xiii) Certification that the antenna usage will not interfere with other adjacent or neighboring transmission or reception functions;

(xiv) The telecommunications company must demonstrate that it is licensed by the FCC if required to be licensed under FCC regulations;

(xv) The applicant, if not the telecommunications service provider, shall submit proof of lease agreements with an FCC licensed telecommunications provider if such telecommunications provider is required to be licensed by the FCC;

(xvi) A full site plan shall be required for all sites, showing the tower, antenna, antenna support structure, building, fencing, buffering, access, and all other items required in this ordinance. The site plan

shall not be required if the antenna is to be mounted on an existing structure; and

(xvii) At the time of site selection, the applicant should demonstrate how the proposed site fits into its overall network within the city.

Sec. 84. Co-location.

(1) To minimize adverse visual impacts associated with the proliferation of towers, co-location of personal wireless service facilities on existing or new towers is encouraged as follows:

(a) Proposed facilities may, and are encouraged to, co-locate onto existing towers. Such co-location is permitted by right and new or additional conditional use permit approval is not required, except that any other permit, license, lease, or franchise requirements must be satisfied, and the co-location must be accomplished in a manner consistent with the policy, site criteria, and landscape/screening provisions contained in this ordinance.

(b) The conditional use permit requirement for a facility may be waived in all zones if the applicant locates the antenna on an existing structure or an existing tower. The applicant must submit detailed plans to the community development department for a co-location permit to determine if the conditional use permit process and public hearing can be waived. No building permit will be issued until approval is granted by a co-location permit or conditional use permit.

(c) The city may deny an application to construct new facilities if the applicant has not shown by

substantial evidence that it has made a diligent effort to mount the facilities on an existing structure or tower.

(d) To reduce the number of antenna support structures needed in the city in the future, new proposed support structures shall be designed to accommodate antennas for more than one user, unless the applicant demonstrates why such design is not feasible for economic, technical or physical reasons.

(e) Unless co-location is not feasible: (i) an applicant's site plan shall reserve an area for other providers' equipment and/or probable expansion or modification of the applicant's proposed facility near the base of the applicant's tower. A first right-of-refusal (which is either executed or maintained while the providers personal wireless facilities and services are in use) to lease the area at the base of the tower or mount for other providers will meet the reservation requirement. To provide further incentive for co-location, an existing tower may be modified through a collocation permit which may be issued by the city manager or designee when an applicant can demonstrate the ability to collocate an additional antenna of the same type as that on the existing tower and that the height of the existing tower will not be increased.

(f) While co-location and the requirements herein are encouraged, co-location shall not take precedence over the construction of shorter towers with appropriate screening.

(2) Providers with existing facilities capable of accommodating co-location within the city of Des Moines are hereby required to negotiate in good faith with

any applicant seeking to co-locate telecommunications equipment on their facilities.

If an applicant is unable to reach a co-location agreement with a provider owning or controlling an existing facility within the city as the result of terms and conditions which are believed to be in bad faith and anti-competitive, the aggrieved applicant may, upon payment of a filing fee to be established by the city manager, petition the community development director to make a determination as to whether such terms and conditions should be deemed in bad faith and anti-competitive. If the city attorney concludes that the challenged terms and conditions of any co-location agreement are in bad faith and anti-competitive, the city attorney may institute proceedings before the hearing examiner seeking revocation of any or all land use or other authorizations granted by the city with respect to the existence or operation of such facility; however, the city may, at its sole discretion, withdraw or refrain from initiating a revocation proceeding until such time as the aggrieved applicant makes payment or reaches and complies with an agreement with the city setting a schedule for payment of all reasonably anticipated costs to be incurred by the city in a revocation proceeding before the hearing examiner.

Upon receipt of a revocation recommendation from the city attorney, the hearing examiner shall conduct all necessary proceedings and reach a determination as to whether the terms and conditions of the challenged co-location agreement are in bad faith and anti-competitive. The hearing examiner shall have authority to revoke any and all land use permits or other authorizations granted by the city with respect to the existence and operation of telecommunications facilities owned or controlled by any provider found to be in violation of this section or impose

lesser sanctions as provided in section 74. Upon a determination by the hearing examiner to revoke permits or authorizations enabling the existence or operation of any facility(ies) or improvement(s) located within the city, the affected provider shall remove such facility(ies) in the time and manner provided in section 75 of this ordinance.

Notwithstanding provisions found elsewhere in city codes, appeals of any hearing examiner decision issued under this section shall be before the King County Superior Court, and must be filed and served within twenty-one days of the issuance of such decision as provided in RCW 36.70C.040(3).

Sec. 85. Design criteria.

(1) As provided above, new facilities shall be designed to accommodate co-location, unless the applicant demonstrates why such design is not feasible for economic, technical, or physical reasons.

(2) Facilities shall be architecturally compatible with the surrounding buildings and land uses in the zoning district and screened or otherwise integrated, through location and design, to blend in with the existing characteristics of the site.

(a) Setback. A tower's setback shall be measured from the base of the tower to the property line of the parcel on which it is located. In residential districts and residential land use areas, where permitted, towers shall be set back from all property lines a distance equal to 100% of tower height as measured from ground level, except for unusual geographic limitations or other public policy considerations, as determined in the city's sole discretion. All other towers shall comply with the

minimum setback requirements of the area in which they are located in all other zoning districts, unless there are unusual geographical limitations or other public policy considerations as determined in the sole and absolute discretion of the city.

Such considerations shall include by way of illustration and not limitation, but are not limited to:

(i) Impact on adjacent properties;

(ii) Alternative sites for personal wireless facilities; and

(iii)The extend to which screening and camouflaging will mitigate the affects of the personal wireless facilities.

(b) Public way setback exception. The setback requirement may be waived if the antenna and antenna support structure are located in the city public way.

(c) View corridors. Due consideration shall be given so that placement of towers, antenna, and personal wireless service facilities do not obstruct or significantly diminish views of Mt. Rainier, Puget Sound or the Olympic Mountains.

(d) Color, marking, lights, signals and signs. Towers shall have a color generally matching the surroundings or background that minimizes their visibility, unless a different color is required by the FCC or FAA.

No signals, lights, or signs shall be permitted on towers unless required by the FCC or the FAA. Should

marking be required, in cases where there are residents located within a distance which is 300% of the height of the tower, then dual mode lighting shall be requested from the FAA and the residents located within said distance shall be notified.

(e) Equipment and structures. Ground level equipment, buildings, and the tower base shall be screened from public view. The standards for the equipment buildings are as follows:

(i) The maximum floor area is 300 square feet and the maximum height is limited to the height of a one-story building which design is consistent with the neighborhood. Except in unusual circumstances or for other public policy considerations the equipment building may be located no more than fifty feet (50′) from the tower or antenna, with any additional distance to be left to the discretion of the community development director . Depending upon the aesthetics and other related issues, the city, in its sole discretion, may approve multiple equipment structures or one or more larger structures.

(ii) Ground level buildings shall be screened from view by landscape plantings, fencing, or other appropriate means to satisfy city standards for Type I landscaping.

(iii)Equipment buildings mounted on a roof shall have a finish similar to the exterior building walls. Equipment for roof-mounted antenna may also be located within the building on which the antenna is mounted.

(iv)In instances where equipment buildings are located in residential zones, equipment

buildings shall comply with setback requirements and shall be designed so as to conform in appearance with nearby residential structures.

(v) Equipment buildings, antenna, and related equipment shall occupy no more than twenty-five percent (25%)of the total roof area of the building the facility is mounted on, which may vary in the city's sole discretion if co-location and an adequate screening structure is used.

(vi)Noise from antennae equipment should be reduced where possible to 30Db. Continual low frequency sounds such as hums, clicks, buzzes and the like should be avoided.

The use must be approved on a site plan or final development plan, as applicable.

(f) Federal requirements. All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If those standards and regulations are changed, then personal wireless service providers governed by this ordinance shall bring their towers and antennas into compliance with the revised standards and regulations within three (3) months of their effective date or the timelines provided by the revised standards and regulations, whichever time period is longer. The revised standards and regulations are not retroactively applicable to existing providers, unless otherwise provided or permitted by federal law. Failure to bring towers and antennas into compliance with the revised standards and regulations shall constitute grounds for the city to remove a provider's facilities at the provider's expense.

(g) Building codes; safety standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable city building codes and the applicable standards for towers that are published by the Electronic Industries Association ("EIA"), as amended from time to time. If, upon inspection, the city concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring the tower into compliance with such standards. If the owner fails to bring its tower into compliance within thirty (30) days, the city may remove the tower at the owner's expense.

(h) Structural design. Towers shall be constructed to the EIA Standards, which may be amended from time to time, and to all applicable construction/building codes. Further, any improvements or additions to existing towers shall require submission of site plans stamped by a professional engineer which demonstrate compliance with the EIA Standards and all other good industry practices. The plans shall be submitted and reviewed at the time building permits are requested.

(i) Fencing. A well-constructed wall, or wooden fence not less than six feet in height from the finished grade shall be provided around each personal wireless service facility. Fencing should be colored or should be of a design which blends into the character of the existing environment. Access to the facility shall be through a locked gate. The use of chain link, plastic, vinyl, or wire fencing is prohibited unless it is fully screened from public view through the use of either climbing evergreen shrubs on the fence or evergreen shrubs equal to the height

of the fence and consistent with the city's Type I landscaping standards.

(j) Tower and antenna height.

(i) All applicants for approvals and/or permits required by the city for towers or antennas must demonstrate through engineering evidence that the height of the proposed tower and/or antenna is the minimum height necessary to satisfactorily fulfill the facility's intended function.

(ii) No tower or antenna that is taller than the minimum height required, based on engineering evidence, shall be approved or otherwise permitted. Engineering evidence reviewed and considered by the city may include information obtained through the third party review process set forth in section 90.

(iii)No tower or mount shall exceed 80 feet; provided that:

(A) A conditional use permit may be issued by the hearing examiner to allow a tower or mount up to but not exceeding one hundred twenty feet (120') if the applicant can show by clear and convincing evidence that the additional height is necessary to allow for collocation of one or more additional facilities on the proposed tower; and

(B) The applicant presents a binding agreement with another provider ready, willing and able to collocate its facility on the proposed tower at or within a reasonable time of its completion, but not more than ninety (90) days following completion, except for conditions or circumstances outside the control

of the parties wishing to effectuate the collocation agreement related to the tower at issue; or, the applicant presents a construction plan calling for collocation of more than one facility belonging to the applicant on the proposed tower at or within a reasonable time of its completion, but not more than ninety (90) days following completion, except for conditions or circumstances outside the control of the applicant; and

(C) In the event that collocation of an additional facility has not occurred on any tower granted approval for a height exceeding eighty (80) feet within the time period set forth above, the city may order removal or modification of the facility at the owner's expense as provided in this ordinance; and,

(D) In considering the application for a conditional use permit under this section, the hearing examiner shall evaluate the matter and impose conditions consistent with subsections 85(2)(j)(i) and (ii) and other relevant provisions of this ordinance.

(k) Antenna support structure safety. The applicant shall demonstrate that the proposed antenna and support structure are safe and the surrounding areas will not be negatively affected by support structure failure, falling ice, or other debris or interference. All support structures shall be fitted with anti-climbing devices, as approved by the manufacturers.

(l) Required parking. If the cell site is fully automated, the location for one parking space for maintenance visits shall be designated on the site plan. If the site is not automated, adequate parking shall be reserved on the site plan for on-site employees.

(m) Tower separation. In no case shall towers be located closer than five hundred feet (500') from another tower whether it is owned or utilized by applicant or another provider, unless the city manager designates areas where multiple towers can be located in closer proximity following a third party review initiated upon receipt of an application warranting such study.

(n) Antenna criteria. Antenna on or above a structure shall be subject to the following:

(i) The antenna shall be architecturally compatible with the building and wall on which it is mounted, and shall be designed and located so as to minimize any adverse aesthetic impact.

(ii) The antenna shall be mounted on a wall of an existing building in a configuration as flush to the wall as technically possible and shall not project above the wall on which it is mounted unless it must be for technical reasons. In no event shall an antenna project more than sixteen feet (16') above the roof line including parapets.

(iii)The antenna shall be constructed, painted, or fully screened to match as closely as possible the color and texture of the building and wall on which it is mounted.

(iv)The antenna may be attached to an existing conforming mechanical equipment enclosure which projects above the roof of the building, but may not project any higher than the enclosure.

(v) If an accessory equipment shelter is present, it must blend with the surrounding buildings in architectural character and color.

(vi)The structure must be architecturally and visually (color, size, bulk) compatible with surrounding existing buildings, structures, vegetation, and uses. Such facilities will be considered architecturally and visually compatible if they are camouflaged to disguise the facility.

(vii) Site location and development shall preserve the pre-existing character of the site as much as possible. Existing vegetation should be preserved or improved, and disturbance of the existing topography of the site should be minimized, unless such disturbance would result in less visual impact of the site on the surrounding area. The effectiveness of visual mitigation techniques must be evaluated by the city, in the city's sole discretion.

(viii) For installations or buildings greater than thirty feet (30') in height, see other applicable provisions of this ordinance. In addition to the other requirements of this ordinance, on buildings thirty feet (30') or less in height, the antenna may be mounted on the roof if the following additional criteria are satisfied:

(A) The city finds that it is not technically possible or aesthetically desirable to mount the antenna on a wall.

(B) No portion of the antenna or base station causes the height of the building to exceed the limitations set forth herein.

(C) The antenna or antennas and related base stations cover no more than an aggregate total of twenty-five percent (25%) of the roof area of a building, which may vary in the city's sole discretion, if co-locating and an adequate screening structure are used.

(D) Roof mounted antenna and related base stations are completely screened from view by materials that are consistent and compatible with the design, color, and materials of the building.

(E) No portion of the antenna may exceed sixteen feet (16') above the height of the existing building.

(ix) If a proposed antenna is located on a building or a lot subject to a site review, approval is required prior to the issuance of a building permit.

(x) No antenna shall be permitted on property designated as an individual landmark or as a part of a historic district, unless such antenna has been approved in accordance with city ordinances.

(xi) No personal wireless service provider or lessee or agent thereof shall fail to cooperate in good faith to accommodate co-location with competitors. If a dispute arises about the feasibility of co-locating, the city manager may require a third party technical study, at the expense of either or both parties, to resolve the dispute.

(xii) No personal wireless service provider or lessee shall fail to assure that its antenna complies at all times with the current applicable FCC standards. After installation, but prior to putting the

antenna in service, each provider shall submit a certification by an independent professional engineer to that effect. In the event that an antenna is co-located with another antenna, the certification must provide assurances that FCC approved levels of electromagnetic radiation will not be exceeded by the co-location.

(xiii) No antenna shall cause localized interference with the reception of any other communications signals including, but not limited to, public safety, television, and radio broadcast signals.

(xiv) No person shall locate an antenna or tower for wireless communications services upon any lot or parcel except as provided in this ordinance.

(3) Setback from street. Unless there are unusual geographic limitations or other public policy considerations, as determined in the city's sole discretion, no such antenna, antenna array, or its support structure shall be erected or maintained closer to any street than the minimum setback for the zone in which it is located unless otherwise waived or exempt.

(4) Guy wires restricted. No guy or other support wires shall be used in connection with such antenna, antenna array, or its support structure except when used to anchor the antenna, antenna array, or support structure to an existing building to which such antenna, antenna array, or support structure is attached; however, the public works director may permit the temporary use of guy wires where such use is required in an emergency or other circumstances that are in the interest of public health and safety, but in no event should such temporary use be allowed for more than thirty (30) days.

Sec. 86. Permits required. Where a tower or antenna support structure will be sixty feet (60) or less in height, and such facility is not otherwise exempt from coverage by this ordinance, in addition to the other provisions of this ordinance, an applicant will be required to obtain design review approval as set forth in DMMC 18.58. In the event that a proposed tower or antenna support structure will be located in a residential zone, or an unscreened tower in the downtown area, or will be more than 60 feet in height, in addition to the other provisions of this ordinance, an applicant will be required to obtain a conditional use permit. With respect to the placement of antenna on a tower or antenna support structure, the requirements for a conditional use permit or design review will be applicable based on the height of the tower and antenna or mount and antenna unless this ordinance provides other requirements to the contrary.

To meet the standards of this ordinance, a personal wireless service facility must also comply with the other requirements under this ordinance and, for antennas attached to the roof or sides of a building at least thirty feet (30') in height, an existing tower, a water tank, or a similar structure:

(1) Antennas mounted on existing structures in the commercial zones, not exceeding 16 feet in height, may be permitted following design review approval as provided in DMMC 18.58 and submittal of an affidavit of compliance, with this Ordinance and other city regulations.

(2) Antennas, antenna arrays, and support structures not on publicly-owned property shall not extend more than sixteen 16 feet above the highest point of the structure on which they are mounted. The antenna, antenna array, and their support structure shall be

mounted so as to blend with the structure to which the antenna is attached. The antenna and its support structure shall be designed to withstand a wind force of one hundred miles per hour (100 mph) without the use of supporting guy wires. The antenna, antenna array, and their support structure shall be a color that blends with the structure on which they are mounted.

(3) To the extent that antenna are attached to electric, phone or light poles and such antenna are no more than two feet (2') in height, collocation and building permits will be required, but such antenna(s) shall not be subject to setbacks and screening requirements.

Sec. 87. Inspection requirements.

Each year after a facility becomes operational, the facility operator shall conduct a safety inspection in accordance with the EIA and FCC Standards and within sixty (60) days of the inspection file a report with the city manager. Submission of a copy of FCC required, and duly filed, safety inspection report, or the facility operator's maintenance reports for the prior twelve months in the event no FCC report is required for such year, shall satisfy the requirements of this section.

Sec. 88. Landscaping/screening.

(1) Landscaping. Landscaping, as described herein, shall be required to screen personal wireless service facilities as much as possible, to soften the appearance of the cell site. The city may permit any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping, if they achieve the same degree of screening as the required landscaping. If the antenna is mounted flush on an existing building, and

other equipment is housed inside an existing structure, landscaping shall not be required.

(2) Screening. The visual impacts of a personal wireless service facility shall be mitigated through landscaping or other screening materials at the base of the tower and ancillary structures. The following landscaping and buffering shall be required around the perimeter of the tower and accessory structures, except that the city may waive the standards for those sides of the facility that are not in public view. Landscaping shall be installed on the outside of fences. Further, existing vegetation shall be preserved to the maximum extent practicable and may be used as a substitute for or as a supplement to landscaping requirements.

(3) Landscaping and screening requirements may be waived by the city where such measures are not in the public interest.

(4) In the event that landscaping and/or screening is not maintained at the required level, the city after giving thirty (30) days advance written notice may maintain or establish the landscaping and/or screening. All expenses incurred by the city under this section shall constitute a civil debt owing to the city jointly and severally by the owner(s) and lessee(s) which debt shall be collectible in the same manner as any other civil debt.

Sec 89.Non-Use/abandonment

(1) Abandonment. No less than 30 days prior to the date that a personal wireless service provider plans to abandon or discontinue operation of a facility, the provider must notify the city of Des Moines by certified U.S. mail of the proposed date of abandonment or

discontinuation of operation. In the event that a licensed carrier fails to give notice, the facility shall be considered abandoned upon the city's discovery of discontinuation of operation. Upon such abandonment, the provider shall have 60 days or additional period of time determined in the reasonable discretion of the city within which to:

(a) Reactivate the use of the facility or transfer the facility to another provider who makes actual use of the facility; or

(b) In the event that abandonment as defined in this Ordinance occurs due to relocation of an antenna at a lower point on the antenna support structure, reduction in the effective radiated power of the antenna or reduction in the number of transmissions from the antennas, the operator of the tower shall have six months from the date of effective abandonment to co-locate another service on the tower. If another service provider is not added to the tower, then the operator shall promptly dismantle and remove that portion of the tower which exceeds the minimum height required to function satisfactorily. Notwithstanding the forgoing, changes which are made to personal wireless facilities which do not diminish their essential role in providing a total system shall not constitute abandonment. However, in the event that there is a physical reduction in height of substantially all of the providers towers in the city or surrounding area then all of the towers within the city shall similarly be reduced in height.

(2) Dismantle and removal facility. If the tower, antenna, foundation, and facility are not removed within the sixty (60) days time period or additional period of time allowed by the city, the city may remove such tower, antenna, foundation, and related facility at the

provider's expense. If there are two or more providers co-locating on a facility, except as provided for in the paragraph above this provision shall not become effective until all providers cease using the facility.

At the earlier of sixty (60) days from the date of abandonment without reactivating or upon completion of dismantling and removal, city approval for the facility shall automatically expire.

Sec. 90. Third party review. Personal wireless service providers use various methodologies and analyses, including geographically-based computer software, to determine the specific technical parameters of their services and low power mobile radio service facilities, such as expected coverage area, antenna configuration, topographic constraints that affect signal paths, etc. In certain instances, a third party expert may need to review the technical data submitted by a provider. The city may require a technical review as part of a permitting process. The costs of the technical review shall be borne by the provider.

The selection of the third party expert may be by mutual agreement between the provider and the city, or at the discretion of the city, with a provision for the provider and interested parties to comment on the proposed expert and review its qualifications. The expert review is intended to address interference and public safety issues and be a site-specific review of technical aspects of the facilities or a review of the providers' methodology and equipment used and not a subjective review of the site which was selected by a provider. Based on the results of the expert review, the city may require changes to the provider's application. The expert review shall address the following:

(1) The accuracy and completeness of submissions;

(2) The applicability of analysis techniques and methodologies;

(3) The validity of conclusions reached; and

(4) Any specific technical issues designated by the city.

Chapter 20.08 - Construction

Sec. 91. Construction standards. No person shall commence or continue with the construction, installation or operation of telecommunications facilities within the city except as provided in this ordinance.

Sec. 92. Construction codes. Telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations including, but not limited to, the National Electrical Safety Code. Telecommunication facilities shall comply with the city's Building and Construction Code, Title 14 DMMC. In the event of a conflict between Title 14 and this ordinance, this ordinance applies.

Sec. 93. Construction permits. No person shall construct or install any telecommunications facilities within the city without first obtaining a construction permit therefore, provided, however:

(1) No permit shall be issued for the construction or installation of telecommunications facilities within the city unless the telecommunications carrier has

filed a registration statement with the city pursuant to this ordinance.

(2) No permit shall be issued for the construction or installation of telecommunications facilities in the public ways unless the telecommunications carrier has applied for and received a franchise pursuant to this ordinance.

(3) Unless otherwise provided by law, franchise or license, no permit shall be issued for the construction or installation of telecommunications facilities without payment of all fees pursuant to this ordinance.

(4) No permit shall be issued to cut any public way, the surface of which is less than five (5) years old.

Sec. 94. Applications. Applications for permits to construct telecommunications facilities shall be submitted upon forms provided by the city. The applicant shall pay all associated fees and shall include any additional information as requested by the city manager or designee. The application shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

(1) That the facilities will be constructed in accordance with all applicable codes, rules and regulations.

(2) The location and route of all facilities to be installed on existing utility poles.

(3) The location and route of all facilities to be located under the surface of the ground, including the

line and grade proposed for the burial at all points along the route which are within the public ways.

(4) The location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the public ways along the underground route proposed by the applicant.

(5) The location of all other facilities to be constructed within the city, but not within the public ways.

(6) The construction methods to be employed for protection of existing structures, fixtures and facilities within or adjacent to the public ways.

(7) The location, dimension and types of all trees within or adjacent to the public ways along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction.

Sec. 95. Engineer's certification. Unless otherwise provided in a license or franchise, all permit applications shall be accompanied by the certification of a registered professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations. The engineer shall provide a certificate of the construction cost estimate.

Sec. 96. Traffic control plan. All permit applications which involve work on, in, under, across or along any public ways shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed.

Sec. 97. Issuance of permit. Within forty-five (45) days after submission of all plans and documents required of the applicant and payment of necessary permit fees, the city manager or designee, if satisfied that the application, plans and documents comply with all requirements of this ordinance, shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as the city manager or designee may deem necessary or appropriate.

Sec. 98. Construction schedule. The permittee shall submit a written construction schedule to the city manager or designee ten (10) working days before commencing any work in or about the public ways . The permittee shall further provide written notification to the city manager or designee not less than five (5) working days in advance of any excavation or work in the public ways.

Sec. 99. Compliance with permit. All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The city manager or designee and his or her representative shall be provided access to the work and such further information as he or she may require to ensure compliance with such requirements.

Sec. 100. Display of permit. The permittee shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the city manager or designee at all times when construction work is occurring.

Sec. 101. Survey of underground facilities. If the construction permit specifies the location of facilities by depth, line, grade, proximity to other facilities or other standards, the permittee shall cause the location of such facilities to be verified by a registered Washington land surveyor. The permittee, at its expense, shall relocate any facilities which are not located in compliance with permit requirements.

Sec. 102. Noncomplying work. Upon order of the city manager or designee, all work which does not comply with the permit, the approved plans or specifications for the work, or the requirements of this ordinance shall be removed.

Sec. 103. Completion of construction. The permittee shall promptly complete all construction activities so as to minimize disruption of the public ways and other public and private property. All construction work authorized by a permit within public ways , including restoration, must be completed within ninety (90) days of the date of issuance or at such other interval as the city may specify in writing upon issuance of the permit.

Sec. 104. As-built drawings. Within thirty (30) days after completion of construction, the permittee shall furnish the city manager or designee with two (2) complete sets of plans, drawn to scale and certified to the city as accurately depicting the location of all telecommunications facilities constructed pursuant to the permit.

Sec. 105. Restoration of improvements. Upon completion of any construction work, the permittee shall promptly repair, but in no event longer than such time as may be established by the city during permit review, any

and all public and private property, improvements, fixtures, structures and facilities which are damaged during the course of construction, restoring the same to their condition before construction commenced.

Sec. 106. Landscape restoration.

(1) All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, operation, repair or replacement of telecommunications facilities, which is done pursuant to a franchise, license or permit, shall be replaced or restored to the condition existing prior to performance of the work.

(2) All restoration work within the public ways shall be done in accordance with landscape plans approved by the city.

Sec. 107. Location of facilities. Unless otherwise required in current or future city ordinances regarding underground construction requirements, all facilities shall be constructed, installed and located in accordance with the following terms and conditions:

(1) Telecommunications facilities shall be installed within an existing underground duct or conduit whenever excess capacity exists within such utility facility.

(2) A franchisee with written authorization to install overhead facilities shall install its telecommunications facilities on pole attachments to existing utility poles only, and then only if surplus space is available.

(3) Whenever all existing telephone, electric utilities, cable facilities or telecommunications facilities are located underground within public ways , a franchisee with written authorization to occupy the same public ways must also locate its telecommunications facilities underground.

(4) Whenever all new or existing telephone, electric utilities, cable facilities or telecommunications facilities are located or relocated underground within public ways, a franchisee that currently occupies the same public ways shall concurrently relocate its facilities underground at its expense.

Sec. 108. Conduit occupancy. In furtherance of the public purpose of reduction of public way excavation, it is the goal of the city to encourage both the shared occupancy of underground conduit as well as the construction, whenever possible, of excess conduit capacity for occupancy of future right-of-way occupants. Therefore, if a franchisee is constructing underground conduit for its own telecommunications facility, and the city reasonably determines such construction is in an area in which another telecommunications provider(s) may also construct telecommunications facilities in the future, city may require the franchisee to construct excess conduit capacity in the public ways, provided the expense of such excess capacity shall be borne by the city (calculated as the difference between what franchisee would have paid for the construction of its conduit and the additional cost only of the excess conduit). Franchisee may either lease the excess conduit to city at a rate of one dollar ($1.00) for the term of the franchise (in which case the city will be permitted to sublease the excess conduit at its sole discretion), or franchisee may manage the excess conduit itself and be permitted to charge a reasonable market lease

rate for occupancy of the additional conduit space, provided such lease revenues shall be first applied to reimburse city for its actual contribution to the construction of the excess conduit (plus interest compounded at the rate the city invested its funds during the time in question).

Sec. 109. Franchisee occupancy of city owned conduit. In furtherance of the same objectives of section 108 above, if city owns or leases conduit in the path of franchisee's proposed telecommunications facilities, and provided it is technologically feasible for franchisee to occupy the conduit owned or leased by city, franchisee shall be required to occupy the conduit owned or leased by city in order to reduce the necessity to excavate the public way. Franchisee shall pay to city a fee for such occupancy which shall be the cost franchisee would have expended to construct its own conduit from the outset, as certified by the Franchisee's engineer and approved by the city engineer. City and franchisee may agree to amortize the fee through annual payments to city over the term of the franchise, including the time value of money.

Sec. 110. Construction surety. Prior to issuance of a construction permit, the permittee shall provide a construction bond, as provided in this ordinance.

Sec. 111. Compliance with one number locator service. All licensees and franchisees shall, before commencing any construction in the public ways, comply with all regulations of 19.122 RCW, the One Number Locator Service.

Chapter 20.09 - Fees

Sec. 112. Pre-application conference and application fee. Prior to the acceptance of an application by the city, applicants shall participate in a pre-application conference for the purpose of establishing the application fee. The purpose of the application fee is to ensure the recovery of city costs and expenses associated with the review of the application, including but not limited to actual costs of city staff time and resources as well as any outside consultation expenses which the city reasonably determines are necessary to adequately review and analyze the application. The application fee shall be established by resolution in the sole discretion of the city council and shall be a minimum of Two Thousand Five Hundred Dollars ($2,500.00), with the maximum fee established depending upon estimated reasonable city costs and expenditures in review of the application. Disputes in the amount required by city shall be resolved by the hearing examiner established pursuant to section 121 of this ordinance. All franchisee and licensee applicants shall deposit the application fee with the city. This application fee shall be applied towards actual expenses and costs of the city. Any unencumbered application fees shall be refunded to the applicant upon written request of the applicant, but in no event earlier than sixty (60) days after granting or denial of the permit.

Sec. 113. Refund. An applicant whose license or franchise application has been withdrawn, abandoned or denied shall, within sixty (60) days of its application and review fee payment, be refunded the balance of its deposit under this section, less all ascertainable costs and expenses incurred by the city in connection with the application.

Sec. 114. Other city costs. All grantees shall, within thirty (30) days after written demand therefore, reimburse the city for all direct and indirect costs and expenses incurred by the city in connection with any modification, amendment, renewal or transfer of the license or franchise.

Sec. 115. Reserved compensation for public ways. The city reserves its right to fix a fair and reasonable compensation to be paid for the authorization granted to a grantee including permit fees and charges as provided in DMMC 12.04, the city's Right-Of Way Use Code. Nothing in this ordinance shall prohibit the city and a grantee from agreeing upon the compensation.

Sec. 116. Compensation for city property. If the right is granted, by lease, license, franchise or other manner, to use and occupy city property for the installation or use of telecommunications facilities, the compensation to be paid shall be fixed by the city.

Sec. 117. Construction permit fee. Prior to issuance of a construction permit for a project on, under, over or through city property, including rights-of-way, the permittee shall pay a permit fee equal to one thousand dollars ($1,000) or .75 percent of the estimated cost of constructing the telecommunications facilities, as certified by the applicant's engineer and approved by the city engineer, whichever is greater. The purpose of the construction permit fee shall be to recover city's actual attributable costs, expenses, damage or public way value diminution as a result of permittee's occupancy of the public way. City hereby finds that it must at this time attribute costs, expenses, damage, and diminution of value to permittee until such time as actual costs can be ascertained. This results from the inability of city to

ascertain the number and type of all public way permittees hereunder as well as the extent and nature of all future such occupancy. Therefore, the city shall within six (6) months of the effective date of this ordinance commence a study to analyze the value of city public ways, after which the city shall review the fees of this chapter and DMMC 12.04, the city's Right-of-Way Use Code, and adjust them to the extent city determines in its sole discretion is necessary, if any, to more accurately represent ascertainable actual costs associated with future permittee's occupancy. In no event shall construction permit fees received prior to such study and analysis be refunded or increased.

Sec. 118. Annual fees. Each grantee shall pay an annual fee to the city equal to the city's costs in connection with reviewing, inspecting and supervising the use and occupancy of the public way.

Sec. 119. Regulatory fees and compensation not a tax. The fees, charges and fines provided for in this chapter are separate from, and additional to, any and all federal, state, local, and city taxes as may be levied, imposed or due from a telecommunications carrier or provider, its customers or subscribers or on account of the lease, sale, delivery or transmission of telecommunications services.

Sec. 120. City manager authorized to set and modify fees. The city manager is authorized to set or modify any and all fees, charges or assessments established under this ordinance by administrative order(s) which shall be filed with and maintained by the city clerk.

Chapter 20.10. - Appeals.

Sec. 121. Appeal of administrative decision. A decision of the city manager or designee made in accordance with this title, including assessment of fees as provided herein, shall be considered a final administrative decision. A person aggrieved by a decision of the city manager or designee made pursuant to this ordinance may appeal such decision to the hearing examiner in accordance with the Hearing Examiner Code, 18.94 DMMC. The time and form of such appeals is provided in DMMC 18.94.114.

Chapter 20.11 - Miscellaneous.

Sec. 122. Context. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

Sec. 123. DMMC 18.32.030 and sections 1 (24.44.030) and 28 of Ordinance No. 175 as amended by section 8 of Ordinance No. 248, as amended by section 1 of Ordinance No. 391 as amended by section 5 of Ordinance No. 445 as amended by section 4 of Ordinance No. 793 as amended by section 7 of Ordinance No. 1106 are amended to read as follows:

> **18.32.030. Uses requiring conditional use permit.** The following uses may locate subject to the issuance of a conditional use permit processed as provided in the hearing examiner code:

(1) Cemeteries; provided:

(a) No building shall be located closer than 100 feet from a boundary line;

(b) A protective fence and a landscaped strip of evergreen trees and shrubs at least 10 feet in width shall be installed on all common boundary lines with R zoned property;

(2) Columbariums, crematories, and mausoleums; provided, these uses are specifically excluded from all R zones unless inside a cemetery;

(3) Commercial establishments or enterprises involving large assemblages of people or automobiles as follows; provided, these uses are specifically excluded from all R zones:

(a) Amusement parks;

(b) Boxing and wrestling arenas;

(c) Ballparks;

(d) Fairgrounds and rodeos;

(e) Golf driving ranges;

(f) Labor camps (transient);

(g) Open-air theaters;

(h) Race tracks, drag strips, motorcycle hills, and Go-Kart tracks;

(i) Stadiums;

(4) Fire stations and public works maintenance and storage facility buildings when located in any R zone; provided, the following conditions shall be conformed to:

(a) All buildings and structures shall maintain a distance of not less than 20 feet from any property line that is a common property line with R zoned property; and

(b) A building from which fire-fighting equipment emerges onto a street shall maintain a distance of 35 feet from such street.

(5) Hospitals, mental and alcoholic; provided, they are specifically excluded from all RS, RD, RM-2,400 and RM-1,800 zones;

(6) Institutions for training of religious orders;

(7) Antenna systems which:

(a) Are not within the limitation of DMMC 18.08.020(2)(h) or DMMC 18.20.020(8); or

(b) Consist of parabolic antennas such as microwave dishes; or

(c) Consist of a broadcasting or communication stations which transmit electromagnetic radiation;

(8) Recreational areas, commercial, including yacht clubs, beach clubs, tennis clubs, parks, ski areas, marinas, and similar activities;

(9) Universities and colleges, including dormitories and fraternity and sorority houses when on campus;

(10) Fraternal societies as approved by the planning agency when located in an RS zone;

(11) Day-care centers, but excluding family day-care providers subject to the following minimum conditions:

(a) A play yard or equipment yard shall not be located in any required side or front yard;

(b) All buildings and structures on the lot shall maintain a distance of not less than 20 feet from any property line that is common property line with RS classified property. If a greater setback is specified in a particular zone then the setback requirements of the particular zone shall prevail over the minimum setback set forth in this subsection;

(c) No day-care center shall be located within 150 feet of a highway commercial zone;

(d) State licensing standards for such facilities, chapter 388-73 WAC, shall be met;

(e) Such uses shall comply with the parking code requirements of 18.44 DMMC.

(12) Telecommunication facilities as described in the provisions of Title 20.

Sec. 124. Codification. Section 1 through 122 of this ordinance shall be codified as a new Title 20 DMMC, Telecommunications.

Sec. 125. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

Sec. 126. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

PASSED BY the city council of the city of Des Moines this 23rd day of October, 1997 and signed in authentication thereof this 23rd day of October, 1997.

/s/ Scott Thomasson
MAYOR

APPROVED AS TO FORM:

/s/ Gary McLean
City Attorney

ATTEST:

/s/ Denis Staab
City Clerk

Published: October 29, 1997

LEGAL NOTICE
SUMMARY OF ADOPTED ORDINANCE
CITY OF DES MOINES

ORDINANCE NO. 1200, Adopted October 23, 1997.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance relates to telecommunications; establishes requirements for telecommunication carriers and providers and standards for the granting and renewal of telecommunications franchises; provides for the regulation of use of public ways; provides for insurance, bonding and construction standards for telecommunications facilities located in public ways; establishes procedures for appeals of administrative decisions regarding telecommunications facilities; provides for enforcement of this ordinance; establishes requirements for antennas and personal wireless telecommunication facilities, including a purpose statement, definitions, exemptions, site selection criteria, priority of locations, priority on city property, co-location and design criteria, permit inspection requirements and landscaping requirements, non-use and abandonment provisions, third party review, and remedies; and adds a new Title 20 to the Des Moines Municipal Code.

The full text of the ordinance will be mailed without cost upon request.

DENIS STAAB
City Clerk

Published: October 29, 1997